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Court : Patna

Decided On : Jan-07-2003

Judge : Sachchidanand Jha and Prithvi Narayan Yadav, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 302, 304B, 306 and 498A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 221, 222 and 464

Appeal No. : Crl. Appeal (DB) Nos. 481, 493 and 505 of 1998

Appellant : Narendra Singh @ Narendra Kumar Singh and anr.

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Bihari, Adv.

Advocate for Pet/Ap. : P.N. Pandey, V.R.P. Singh, G.C. Roy and Neelam Prasad, Advs.

Judgement :

Sachchidanand Jha, J.

1. There are in all four appellants in this batch of appeals. They have been convicted Under Section 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life. They have also been convicted Under Sections 304B, 498A and 201 of the Penal Code and sentenced respectively to rigorous imprisonment for five years, two years and two years thereunder. The sentences

have been ordered to run concurrently. While appellants of Cr. Appeal No. 481/1998 are brothers-in-law (Dewars) of the deceased, the appellant of Cr. Appeal No. 493/1998 is the father-in law and the appellant of Cr. Appeal No. 505/1998 is the husband.

2. The case relates to an incident of 28.12.1994 in which Pushpa Kumari, sister of Ram Vinay Singh of village Tilak Taj, P.S. Runni Saidpur, District Sitamarhi died unnatural death in her Sasural at village Morsand, PS Runni Saidpur, District Sitamarhi, Ram Vinay Singh lodged written report before the Officer Incharge, Runni Saidpur PS on the same day i.e. on 28.12.1994 at 4.30 p.m. He stated that his sister Pushpa Kumari was married to Munendra Singh, the appellant in Cr. Appeal No. 505/1998 on 28.2.1989. She had been burnt to death at noon. He stated that earlier she was ill-treated by her in-laws for dowry.

3. The above report gave rise to Runni Saidpur PS Case No. 251/1994 and investigation commenced. The Officer Incharge, SI Yogendra Paswan, on receipt of the report, went to village Morsand and on coming to know that the dead body had been taken to Chakwa Ghat for cremation went there and seized the dead body of Pushpa Kumari. He also arrested Narendra Singh @ Narendra Kumar Singh @ Chunnu Singh, Amrendra Singh @ Amrendra Kumar Singh, the appellants of Cr. Appeal No. 481/1998 and brothers-in-law of the deceased, and Munendra Singh, the husband, at the Ghat. The dead body was sent for autopsy which was performed by Dr. Vijayendra Satyarthi, on the next day i.e. 29.10.1994 at 1 p.m. the doctor found that whole body was burnt and charred except both sides, inner part of the right thigh outer part of left thigh and back side of scalp with hair. The extent of burn was assessed at 90 per cent. The doctor opened different parts of the body but did not find any mark of injury. The statement of the witnesses, after completing the necessary formalities, he submitted charge-sheet against the appellants who were thus put on trial.

4. At the trial the prosecution examined ten witnesses to prove its case. Out of them P.W. 5 Sanjay Kumar Singh and P.W. 6 Radhey Shyam Singh were declared hostile while P.W. 4 Rajendra Jha and P.W. 7 Kaushal Kishore Singh were tendered. P.W. 1 Pradeep Kumar and P.W. 2 Uday Shanker Singh were

examined on the point of inquest. The latter however too turned hostile. The Investigating Officer SI Yogendra Paswan was examined as P.W. 9 while the doctor who had held autopsy was examined as P.W. 10. P.W. 3 Sunil Singh and P.W. 8 Ram Binay Singh, the informant are thus material witnesses on facts who supported the prosecution case.

5. The appellants also examined one witness Satyanarayan Singh in defence to prove the handwriting of the deceased Pushpa Kumari and the date of marriage. It may be mentioned here itself that according to the appellants the marriage between Pushpa Kumari and Munendra Singh had taken place seven years prior to her death and, therefore, the case does not come within the mischief of Section 304B of the Penal Code. It may also be mentioned that from the trend of cross-examination and suggestions put to the witnesses, particularly the informant, the appellants tried to make out case that the deceased had committed suicide.

6. At the end of the trial the Trial Court convicted and sentenced the appellants in the manner indicated above.

7. Mr. Prakash Narayan Pandey, learned Counsel for the appellants, firstly submitted that Pushpa Kumari was married to Munendra Singh prior to 1987. The occurrence having taken place on 28.12.1994, the offence Under Section 304B of the Penal Code is not made out. He submitted that only when the essential ingredients of Section 304B, I.P.C. are proved, to wit - that the deceased died within seven years of her marriage, that she died an unnatural death and that soon before her death she had been subjected to cruelty or harassment by her husband or in-laws for or in connection with demand for dowry - that the offence Under Section 304B can be said to have been committed so as to shift the burden of proof on the accused in terms of Section 113B of the Evidence Act. Inasmuch as the prosecution failed to prove that the death was within seven years of marriage the offence Under Section 304B is not made out and, therefore, onus lay on the prosecution to prove its case that the appellants had killed the deceased. He referred to Ext. A which is the Admit Card of the Bihar School Examination Board in the name of Pushpa Kumari with respect to the Secondary School Examination commencing on 20.3.1987. Mr. Pandey submitted that witness no less than the

informant himself in para 13 of his evidence stated that the deceased appeared at the Matriculation (Secondary School) examination after her marriage and that the Admit Card, if any, must be in possession of the accused. The Admit Card admittedly was produced by the appellants. The date of commencement of the examination, as per the said Admit Card, being 20.3.1987, Counsel submitted, it would follow that Pushpa Kumari was married earlier.

8. On behalf of the State it was submitted that there is discrepancy in the description of the School as mentioned in the Admit Card and the one as mentioned by the informant in his evidence. Whereas, according to the informant, Pushpa Kumari had appeared at the matriculation examination from Dhanaur School, in the Admit Card the name of the school was mentioned as High School, Gangewa. The submission appears, prima facie attractive but cannot be accepted, for, no such suggestion was made to the witness namely, D.W. 1 who proved the Admit Card. As a matter of fact, the Admit Card was taken in evidence without objection. It is relevant to mention here except the Admit Card there is no other evidence on the point of date of marriage except oral evidence of the informant. However, whereas in the written report the informant had mentioned the date of marriage as 28.2.1989 in his evidence in Court he stated that the marriage was performed sometime in the year 1993. Even if the reference to the date in evidence is treated as slip of tongue, because the witness also stated about three years' old daughter of the deceased, in the face of documentary evidence i.e. Ext. A, we find it difficult to accept that the marriage was within seven years of death. In any view, in his evidence the informant did not disclose any date of marriage. In these premises, we are inclined to accept the submission of the Counsel for the appellants that the marriage was performed before 1987, and if that is so, the case would clearly fall out of the realm of Section 304B of the Penal Code.

9. Counsel for the appellants next submitted that there is evidence vide P.Ws. 3, 5 and 6 who visited the place of occurrence and saw the dead body, to suggest that the room in which the occurrence took place was bolted from inside. It is true, Counsel submitted, that P.Ws. 5 and 6 were declared hostile but it does not mean that every part of their evidence should be discarded, particularly when their evidence on the point is consistent with P.W. 3 who too stated that the door of the

room had to be broken open. The Investigating Officer in course of spot inspection found bolt of the door broken which according to the Counsel, corroborates the evidence of aforesaid witnesses. In the circumstances, we are inclined to place reliance on the evidence of P.Ws. 5 and 6, besides P.W. 3, to the effect that the room was bolted from inside and the door had to be broken open when smoke billowing out of the room was seen by the witnesses and suspecting something foul they rushed there and finding the door bolted from inside broke it open. The circumstance that the room was found closed and door bolted from inside, none being there, is sufficient to demolish the prosecution case of the appellants setting the deceased on fire. The circumstance strongly suggests that the deceased committed suicide.

10. A question would arise as to whether the appellants can be convicted Under Section 306 of the Penal Code notwithstanding that no charge was framed for the said offence against them. Such a question arises in view of the letters (Exts. 3 and 3/1) which the deceased had written from her Sasural, besides the oral evidence of the informant to the effect that the deceased was being subjected to cruelty for dowry. If a married woman is subjected to cruelty in Sasural this may abet her to commit suicide. Section 107 of the Penal Code defines 'abetment' in the following manner :

'A person abets the doing of a thing who-

First....

Secondly....

Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing.'

11. It is true that no charge Under Section 306 of the Indian Penal Code was framed against the appellants. However where a number of charges could be joined together but one or more of them are not put in there can be conviction in respect of those offence despite absence of the particular charge to prevent failure of justice in cases where commission of the offence is otherwise proved. Reference in this connection may be made to Sections 221 and 222 of the Code of

Criminal Procedure. Sub-section (1) of Section 221 provides that where it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all or any of such offences. In such a case, under Sub-section (2) if it appears in evidence that he committed a different offence for which he might have been charged under Sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it. The illustrations appended to the section may usefully be noticed as under :

'(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.'

Section 222 of the Code of Criminal Procedure too provides that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

12. The two ingredients of Section 306 of the Penal Code are, (a) commission of suicide by a person; and (b) that the accused abetted commission thereof. We have already noticed the definition of abetment Under Section 107 of the Penal Code, and in terms of clause 'thirdly' where a person intentionally by an act or illegal omission, aids doing of anything he will be said to have abetted the crime.

13. In the instant case, there is evidence to suggest that the deceased was subjected to cruelty for or in connection with demand for dowry soon before her death. It is only because she died beyond the period of seven years of marriage

that the offence described Under Section 304B of the Penal Code has been held to be not made out. If the death were within seven years the case would have fallen within the mischief of Section 304B. Any act of cruelty committed in Sasural by the husband and in-laws often drives a married woman to desperation forcing her to take the extreme step of committing suicide. In terms of Section 222 of the Code of Criminal Procedure as seen above where the combination of only some particulars constituting a minor offence is proved, the accused may be convicted of that minor offence. As the prosecution has failed to prove only one particular constituting the graver offence Under Section 304B, namely, that the death took place within seven years of marriage, but succeeded in proving other particulars constituting a different minor offence Under Section 306, Penal Code, we are inclined to think that the case will fall within the mischief of Section 306 of the Code.

14. The ordinary rule undoubtedly is that the accused could be charged specifically with all the offences he is alleged to have committed. However, Sections 221 and 222 of the Criminal Procedure Code amongst others are exception to the ordinary rule so that the accused may not be let off on technical ground i.e. omission to frame charge. Section 464 of the Criminal Procedure Code also provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless in the opinion of the Court of Appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Section 464 no doubt occurs in a different context but gives indication of the fact that omission to frame a particular charge inter alia does not go to the root of the matter.

15. We are conscious of the fact that in such a case retrial is one option which the Appellate Court may consider. However, the Supreme Court in *G.D. Sharma v. State of Uttar Pradesh*, AIR 1960 SC 400, took the view that in such cases the appropriate course for the Appellate Court would be to convict the accused for the offence though he had not been charged for the same without ordering retrial. On the point of omission to frame charge and the effect thereof reference may also be

made to the well known case of Willia (William) Slaney v. State of Madhya Pradesh, AIR 1956 SC 116. In these premises we are of the view that the appellants can be convicted for the offence Under Section 306 of the Indian Penal Code.

16. Counsel for the appellants submitted that even then there cannot be any justification to convict the in-laws, except the husband, of the offence Under Section 306, for, there is evidence coming from the mouth of the informant himself that they lived in another house at a distance of one and a half kilometres from the house in which the deceased and her husband, appellant Munendra Singh, lived and in which the occurrence took place. Though the circumstances which led the deceased to commit suicide are not known but the fact that the in-laws lived in another house, in our opinion, is sufficient to give them the benefit of doubt so far as the offence Under Section 306, I.P.C. is concerned. It would follow that the husband i.e. Munendra Singh alone would be guilty of the offence Under Section 306 of the Penal Code. Section 306 provides for punishment up to ten years. The appellant has remained in jail for more than five years. The occurrence having taken place eight years ago it would meet the ends of justice to sentence him for the period already undergone Under Section 306, I.P.C. His conviction Under Section 498A of the Penal Code for which he has been awarded sentence of two years is also maintained.

17. Coming to the conviction Under Section 201 of the Penal Code, though the in-laws have been held not guilty of the offence Under Section 306 of the Penal Code, that per se may not be enough to acquit them of the charge Under Section 201 of the Penal Code. In this regard Counsel for the appellants submitted that the in-laws cannot be convicted Under Section 201 of the Penal Code. He stated that so far as the factual aspects is concerned, the Investigating Officer found presence of only Narendra Singh @ Narendra Kumar Singh @ Chunnu Singh and Amrendra Singh @ Amrendra Kumar Singh @ Nipul Singh at the burning Ghat and, therefore, Siyaram Singh, the father-in-law, in any case cannot be held guilty. As a matter of fact Counsel submitted that in view of the law laid down in Palvinder Kaur v. State of Punjab, AIR 1952 SC 354, none of the in-laws can be held guilty for the reason that the offence Under Section 201 of the Code can be made out

only if the act is committed with knowledge of the commission of any offence. He pointed out that committing suicide is not an offence and, therefore, if the in-laws participated in the cremation of the dead body, they cannot be held guilty Under Section 201. The submission appears to be attractive but difficult to accept. It is true that committing suicide is not an offence but, certainly, abetting commission of suicide is an offence Under Section 306 for which appellant Munendra Singh has been found guilty. Though the in-laws did not live in the same house it is difficult to believe that they were unaware of the circumstances in which the occurrence took place and if with knowledge of the acts overtly or covertly committed by Munendra Singh abetting the commission of suicide by the deceased, they participated in the crime they would be guilty of the offence Under Section 201 of the Penal Code. Of course, Siyaram Singh, the father-in-law, not being present at the place he cannot be convicted of that offence. In the circumstances, we hold Narendra Singh @ Narendra Kumar Singh @ Chunnu Singh and Amrendra Singh @ Amrendra Kumar Singh @ Nipul Singh, the appellants in Cr. Appeal No. 481/1998, as well as Munendra Singh, the appellant in Cr. Appeal No. 505/1998, guilty of the offence Under Section 201 of the Penal Code. As regards sentence, keeping in view the fact that the former two also remained in jail for some time and the occurrence took place eight years ago it would not be proper to send them to jail at this stage. The sentence of imprisonment already undergone by them, as also Munendra Singh, would serve the ends of justice.

18. In the result, Cr. Appeal No. 493/1998 is allowed. The conviction and sentence awarded to Siyaram Singh is set aside and he is acquitted of the charges. Cr. Appeal Nos. 481/1998 and 505/1998 are allowed in part. The conviction and sentence awarded to the appellants therein, namely Narendra Singh @ Narendra Kumar Singh @ Chunnu Singh and Amrendra Singh @ Amrendra Kumar Singh @ Nipul Singh, are modified in the manner and to the extent mentioned above. They are discharged of the liability of the bail bonds. Cr. Appeal No. 505/1998 is dismissed with the modification in conviction and sentence. The appellant, Munendra Singh, is in jail. He is directed to be released forthwith if not wanted in any other case.