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Binod Kumar Sharma Vs. the State of Bihar

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Court : Jharkhand

Decided On : Feb-06-2007

Reported in : 2007(2)BLJR1141; [2007(3)JCR473(Jhr)]

Judge : Dilip Kumar Sinha, J.

Acts : Evidence Act, 1872 - Sections 32 and 32(1); Indian Penal Code (IPC) - Sections 304, 306 and 498A; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Cr. Appeal No. 123 of 1999 (R)

Appellant : Binod Kumar Sharma

Respondent : The State of Bihar

Advocate for Def. : A.P.P.

Advocate for Pet/Ap. : Anil Kumar, Adv.

Judgement :

Dilip Kumar Sinha, J.

1. The appellant Binod Kumar Sharma has preferred this appeal, which is directed against the judgment of his conviction under Sections 306 & 498A I.P.C. and order of sentence dated 24.4.1999 passed by 1st Addl. Sessions Judge, Jamshedpur

against him whereby and whereunder the appellant was sentenced to undergo rigorous imprisonment for three years and two years respectively in Sessions Trial No. 444/1990.

2. The prosecution case before the trial court below was that the statement of Meera Sharma (since deceased) wife of the appellant was recorded at Tata Main Hospital on 25.5.88 at 12.15 hours by P.W. 8 Brij Bihari Ram A.S.I, of Police. Meera Sharma narrated that her husband appellant and mother-in-law Gulabi Devi had been very frequently chastisby her and that she was abetted by her husband-appellant to commit suicide by setting her body on fire. On 25.5.88 at about 10 A.M. some domestic quarrel picked up and in the same transaction she was abetted by the appellant-husband and her mother-in-law to commit suicide in the manner abetted earlier and consequent to that she went inside the room and set her body on fire after sprinkling K. Oil, as a result of which, she sustained severe burn injuries on her person. After breaking open the door she was removed to Tata Main Hospital, Jamshedpur. She was married to the appellant only two years ago. On the basis of her statement Telco P.S. Case No. 113/88 was registered on 25.5.88 for the offence under Section 498A/306 I.P.C.

3. Mr. Anil Kumar, learned Counsel for the appellant submitted that in course of trial the prosecution produced and examined altogether 8 witnesses. Besides, certain documents were proved viz. letter dated 2.2.87 addressed to the appellant by Meera Sharma Ext. 1, letter of the appellant addressed to Jagan Sharma (father of the deceased) ext. 1/1 another letter by the appellant to his father-in-law ext. 1/2, letter of Meera Sharma addressed to her father Ext. 1/3, envelope in the pen of the appellant Ext. 3, Ferd Beyan of Meera Sharma Ext. 4, endorsement of the Officer-in-Charge on the Ferd Beyan of Meera Sharma Ext. 5, formal F.I.R. Ext. 6, restatement of Meera Sharma under Section 161 Cr.P.C. Ext. 6/1, seizure list Ext. 7 and post-mortem report Ext. 9. The marriage invitation card of Meera Sharma was proved and marked material Ext. I and her photograph being the material Ext. No. 11. On the other hand, photo copies of the letters of the appellant to his father-in-law were proved Ext. A and Ext. A/1.

4. Mr. Anil Kumar, learned Counsel assailed the impugned judgment and order passed by the 1st Additional Sessions Judge, Jamshedpur mainly on the grounds that the trial court failed to appreciate the evidence adduced by the prosecution which could not satisfy the charges as framed against the appellant as the same was inconsistent. The appellant was not examined by the trial court in the right perspective and true spirit of the provisions of Section 313 Code of Criminal Procedure since, without placing the incriminating materials before the appellant, appeared on the record in course of trial and he has been held guilty. The trial court convicted the appellant solely relying upon the so-called dying declaration of Meera Sharma recorded by an Assistant Sub-Inspector of Police against the mandatory provisions of law and also relying upon the statement of the victim Meera Sharma recorded in course of investigation under Section 161 Cr.P.C. which is not admissible under law. In the instant case no independent witness was examined on behalf of the prosecution and the trial court failed to give finding as to whether at the relevant time of her statement under Section 32 of the Evidence Act Meera Sharma was mentally alert, physically fit and was capable to deliver her dying declaration in view of 90% of her burn injuries.

5. In the instant case learned trial court below convicted the appellant on the testimonies of P.W. 8 Brij Bihari Ram who had recorded the statement of the victim at Tata Main Hospital on 25.5.88 at about 12.15 noon at Bed No. 1 in Ward No. 2 on the O.D. slip issued by the Doctor of T.M.H. The statement of victim Meera Sharma was also recorded under Section 161 Cr.P.C, though corroborative in nature but not admissible. In both her statements the victim Meera Sharma has disclosed the cause of her burn injuries and the manner she was abetted by the husband-appellant and her mother-in-law to commit suicide by setting her own body on fire after sprinkling K. Oil. She was admitted in T.M.H. on 25.5.88 and on account of her 90% severe burn injuries, she succumbed on the subsequent day. Her autopsy was conducted by P.W. 5 Gupteshwar Prasad Choudhary on 26.5.88 at 3.30 hours at Mahatma Gandhi Memorial Medical College Hospital, Jamshedpur. In the cross-examination this witness admitted that smell of K. Oil was coming from the entire body as also from hair of Meera Sharma. He further admitted that except burn injuries, he did not find any other external injuries on the dead body. He was of the opinion that the burn might have been caused in a

homicidal attempt or in suicidal attempt. The fact is established that Meera Sharma died of 90% of her burn injuries.

6. Now the point for consideration is as to whether the statement of Meera Sharma recorded by the P.W. 8 A.S.I. Brij Bihari Ram shall be treated as the dying declaration under Section 32 of the Evidence Act or not.

7. The dying declaration is the statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his/her death and such details which fall outside the ambit are not strictly within the permissible limits, laid down under Section 32(1) of the Indian Evidence Act, 1872. The object of a dying declaration is to get person making the declaration the cause of her death and the circumstances which was likely to be resulted in death. Such declaration is relevant and material evidence in the prosecution of offender and it is settled that truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated.

8. In the present case the statement of the victim was recorded by P.W. 8 Brij Bihari Ram not assuming as dying declaration but the statement first point in time to set the law in motion. It was within the competence of P.W. 8 Brij Bihari Ram who was posted at Tata Main Hospital, Ranchi to record the statements of the victims of Medico Legal Case brought to the T.M.H., Jamshedpur which was within the jurisdiction of Telco Police Station. I observe that this witness was not in a position to sustain the gravity of situation that the burn injuries on Meera Sharma was in such a nature that she may succumb so as to send the requisition for a Magistrate for recording her statement in the presence of the Magistrate.

9. Mr. Anil Kumar, assailed the finding of the trial court convicting the appellant that the Apex Court has in catena of decisions discouraged the recording dying declaration by a police officer and urged the Investigating Officers to avail the services of a Magistrate if it was possible to do so. Mr. Anil Kumar, advancing his argument submitted that Tata Main Hospital is situated in the heart of the city where the Judicial Magistrate and the Executive Magistrates were available but no requisition was sent to the authority for recording her statement. P.W. 8 A.S.I. Brij Bihari Ram even did not care to call for the Superintendent of T.M.H., Jamshedpur

or any other responsible Doctor to ascertain the fitness of the victim as to whether she was capable to speak and deliver her dying declaration. Concluding his argument Mr. Kumar submitted that there was no evidence on the record to show that harassment was made to Meera Sharma by the appellant for dowry. On the other hand, the Trial Judge was so much sympathetic while considering the conduct of the appellant who was extending psychological protection to his wife Meera Sharma when her father-in-law had attempted on her modesty. A number of letters have been proved in course of trial in this case but it is no where averred that after the marriage the appellant had demanded cash or kind in the nature of dowry and therefore, his conviction and sentence under Section 498A I.P.C. is unsustainable.

10. Mr. Kumar submitted that similar situation fell for consideration before the Apex Court, reported in : 2001 CriLJ3302 . The Court in Laxmi(Smt.) v. Om Prakash and Ors. observed:

Absence of medical evidence to show if Janak Kumari was in a fit state of mind and physical condition to have at all made a statement and signed the same, doubtful setting of the place- court or home- wherefrom the inexperienced SDM accompanied the investigating officer to record the statement, inconsistency though a little bit with the earlier statement and prima facie unsustainable truth of some of the recitals contained in the statement do not permit the conscience of the Court to accept the dying declaration Ext. P.W. 16-A as safe to act upon.

11. I find substance advanced on behalf of the appellant that at no point of time any demand of dowry was made after the marriage rather the material exhibits produced in the trial court in the form of letters show love and affection of the appellant towards his wife deceased who wanted to protect her from all controversies with reference to a past incidence that when the father of the appellant had attempted on the modesty of his wife the appellant was about to beat his father with the belt but the situation was put under control by the intervention of Meera Sharma. It can well be presumed that such ugly situation could not be tolerated by the mother of the appellant, Gulabi Devi. These are the relevant circumstances which compelled the victim to commit suicide.

12. In so far as the complicity of the appellant is concerned , admittedly Meera Sharma had sustained 90% severe burn injury and there is no medical evidence on the record in support of the relevant fact as to whether under such situation whether she was capable to speak or to deliver her statement before the police. It was equally important before the trial court to judge as to whether Meera Sharma at the relevant time of her so-called lying declaration was mentally alert and physically fit as well as conscious to implicate the appellant as abettor. These are the important aspects which have been ignored by the trial judge while deciding the case which is sensitive in nature. In absence of such ingredients as also in absence of any corroborative medical evidence or circumstantial evidence or in he substantive evidence of other prosecution vitnesses in the backdrop that the victim in her statement before the police did not allege that any demand of dowry was made or the appellant had been extending torture to her in any manner it would not be safe to sustain the conviction of the appellant solely on her statement before P.W. 8 and reasonable doubt is created. It is settled law that whenever any reasonable suspicion is created as to the complicity of an accused (appellant) it always goes in his favour. In view of the above finding I find that the materials before the trial court did not suffice to sustain the conviction of the appellant for the offence under Section 304/498A I.P.C.

13. In the result, after giving him benefit of doubt the appellant Binod Kumar Sharma is acquitted from his conviction and sentences under Section 498A/306 I.P.C. His bail bond stands discharged.

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