

Prem Chandra Gope and ors. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Apr-04-2008

Reported in : 2008CriLJ3358; [2008(3)JCR162(Jhr)]

Judge : D.K. Sinha, J.

Appellant : Prem Chandra Gope and ors.

Respondent : State of Jharkhand and anr.

Disposition : Petition allowed

Judgement :

D.K. Sinha, J.

1. Present criminal revision is directed against the order dated 14.6.2006 passed by 1st Additional Sessions judge Chaibasa in S.T. No. 81 of 2006 arising out of Jagarnathpur PS Case No. 29 of 2005, whereby and whereunder petition filed on behalf of the petitioners under Section 228 of the Code of Criminal Procedure was rejected and charges were framed against all the petitioners under Sections 313/498-A of the Indian Penal Code as also under Section 3/4 of the Dowry Prohibition Act and separate charge under Section 307 of the Indian Penal Code against the petitioner No. 1 Prem Chandra Gope.

2. Prosecution story in short was that the informant Shanti Gope (opposite party no. 2) was married to the petitioner No. 1 Prem Chandra Gope in Sri Ram Mandir, Jagannathpur on 12.5.1998 in presence of the parents and near relations of the spouse and with their consent. After marriage she came to her matrimonial home with the husband-petitioner No. 1 Prem Chandra Gope and led a happy conjugal life for about 3/4 months and during that period she conceived but it was alleged that on the pretext of her treatment petitioners got her aborted and thereafter behaviour of her husband and in-laws suddenly changed. Her husband demanded a motorcycle in dowry whereas other co-accused persons perpetuated torture in various manner for dowry and demanded money for construction of the house. She was finally driven out but on the interference of elder brother of her husband she was allowed to live in a separate room. It was alleged that on 23.8.1998 her husband brutally assaulted and attempted to set her body on fire by pouring kerosene oil on her person but she escaped and saved her life. From there she returned back to her parental home. Though she complained before the village Munda but he subterfuged the matter. Jagannathpur police also did not take any action. She sent a written complaint to the Superintendent of police, Singhbhum West and on his interference Jagannathpur police registered PS Case No. 29 of 2005 against the petitioners. According to the prosecution case petitioner No. 1 Prem Chandra Gope is the husband, petitioner No. 2 Mukta is the mother-in-law whereas petitioner No. 3 Shankaran Gope is the father-in-law of the informant-opposite party No. 2 Shanti Gope. Police after investigation submitted chargesheet against the petitioners for the alleged offence under Sections 313/307 of the Indian Penal Code.

3. Mr. M.K. Dey, learned Counsel, submitted that the petitioners had preferred a petition under Section 228 of the Code of Criminal Procedure before the 1st Additional Sessions Judge, Chalbasa on the ground that no offence was made out against any of the petitioners under Sections 313/307 of the Indian Penal Code which were exclusively triable by the Court of Sessions and hence their case may be transferred to be tried by the Chief Judicial Magistrate if at all any prima facie offence was found against them. The First Additional Session Judge rejected such petition without appreciation of the material in case diary such as no medical evidence was found are collected by the investigating officer either for the alleged

offence under Section 313 of the Indian Penal Code or for the alleged brutal assault made to the opposite party No. 2 Shanti Gope or that attempt was made to set her body on fire.

4. Mr. Dey pointed that for the allegation of the offence under Section 313 of the Indian Penal Code burdened is heavy upon the prosecution party to produce medical evidence and no charge can be framed only by oral allegation. Similarly, for the charge of deadly assault or the allegation that the petitioners attempted to commit her murder by pouring kerosene oil certain medical evidence or corroborative evidence was required.

5. The informant opposite party No. 2 was silent as to how she escaped from her matrimonial home and again she returned back after two days in the same home where she had apprehension of being murdered and that where she spent her two days. These are the questions which the investigating officer of the case failed to satisfy in the case diary.

6. Learned counsel appearing for the opposite party No. 2 opposed the contention and submitted that petitioners displayed the extreme form of brutality by assaulting her in connection with demand of dowry and she was made to abort on the pretext of her treatment but he conceded that no medical evidence was produced in course of investigation of the case or before the Court.

7. Having regards to the facts and circumstances of the case and argument advanced on behalf of the parties, I had prima facie substance in the argument made for and on behalf of the petitioners that no documentary evidence was produced or collected much less any medical evidence for alleged offence under Sections 315 and 307 of the Indian Penal Code. Admittedly, no medical evidence is required for the allegation under Section 307 of the Indian Penal Code against the accused persons as only the guilty intention of the accused is required to be proved.

8. The important thing to be borne in mind in determining the question whether an offence under Section 307 of the Indian Penal Code is made out, is the intention and not the injury. But in the instant case when there was allegation of brutal

assault to the opposite party No. 2 and that attempt was made by the accused persons, as per allegation to set her body on fire by pouring kerosene oil from the earthen lamp, in my view, it was incumbent upon the prosecution to produce medical evidence. In the facts and circumstances, without prejudice to the merit of the case, the order impugned dated 14.5.2006 passed by 1st Additional Sessions Judge, Chaibasa in S.T. No. 81 of 2006 is set aside with the direction to the Court concerned to pass appropriate order under Section 228(1)(a) of the Code of Criminal Procedure.

9. With these observations, this criminal revision is allowed.

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