

Niranjan Mohapatra and ors. Vs. State of Orissa

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Court : Orissa

Decided On : Sep-24-1997

Reported in : 84(1997)CLT902; I(1998)DMC507

Judge : D.M. Patnaik, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

Appeal No. : Criminal Appeal Nos. 149 and 221 of 1994

Appellant : Niranjan Mohapatra and ors.

Respondent : State of Orissa

Advocate for Def. : Md. K. Hussain, Adv.

Advocate for Pet/Ap. : R. Mohapatra and ; R. Nayak, Advs.

Disposition : Appeal allowed

Judgement :

D.M. Patnaik, J.

1. The above two appeals are heard analogously after are dispensed of by this common judgment.

2. In both the above appeals, all the appellants have been convicted under Sections 498A and 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and seven years respectively, but appellants in Criminal Appeal No. 221 of 94 have been released on probation under Section 4 of the Probation of Offenders Act.

3. The prosecution case in brief is, deceased Renubala @ Ranjita 'married appellant Niranjana sometime during the year 1989 according to the Hindu rites. After marriage while the deceased was staying with her -in-laws, it was alleged by the parents of the deceased that she used to complain of being tortured and ill-treated by the appellants because of non-payment of Rs. 3,000/- being the balance amount of the dowry promised by the father, PW 5 at the time of marriage.

4. On 29.12.92 about 1.00 a.m. in the night, PWs 2 and 3 heard a splashing sound from the well near the house of the appellants PW 2 rushed and found a body Rotting in the water. He called PW 3 who reached the place followed by some other villagers. Renubala was brought out from the well by PW 3. A moment thereafter, she searched for her son aged nine months and gave out that her son was also inside the well. The dead body of child was thereafter recovered from the well. Hearing, that her child was dead, she collapsed and died. Prosecution alleged that she committed suicide by jumping into the well because of ill-treatment and torture meted to her by the appellants. After investigation, the appellants were placed on trial and convicted and sentenced as stated above.

The defence is one of denial.

5. Prosecution examined as many as 11 witnesses of whom the material witnesses were PWs 5 and 6, father and mother of deceased Renubala, PWs 2 and 3 the two immediate post-occurrence witnesses, PWs 8 and 11 the doctors, the former having only declared the death of both whereas the latter conducted the post-mortem examination and the 10., PW 10. The rest of the witnesses were formal witnesses to seizure etc.

6. It is strenuously urged-by Mr. R. Mohapatra, the learned Counsel for the appellants that the prosecution miserably failed to prove the case of 'dowry-death' and that the conviction has been only on the basis of presumption and surmises. Mr. Mohapatra further submits that even assuming there was any torture, ill-treatment etc., yet prosecution miserably failed to prove any such torture or ill-treatment being the proximate cause of the alleged suicide. In support of his argument, Mr. Mohapatra has relied on the decision of this Court in the case of Keshab Chandra Panda v. State, (1994) 7 O.C.R. 756 and the decision of the Apex Court in the case of Sham Lal v. State of Haryana, reported in AIR 1997 SC 1873=I (1997) CCR 231 (SC).

The learned Counsel for the State, however, supports the judgment of conviction.

7. I have gone through the impugned judgment, the evidence of the witnesses and other materials on record.

8. The post-mortem examination report by PW 11 relating to death of the mother does not indicate a case of either homicidal or suicidal death. Therefore, the only conclusion can safely be drawn that the death was rather accidental and that too in both the cases of the mother and the child. That apart, neither in the report nor in the evidence the doctor gave any positive opinion if the death was suicidal. In paragraph 9 of his evidence he stated as follows :

'Cause of death is due to combined effect of shock and symphyxia resulted from vagal inhibital and axiotbering.'

The material part of his evidence in the cross-examination was that the external injury i.e. 'the contusion noticed on the body of deceased Renubala mighthave been caused either by blunt force or object and by coming in contact with an object having smooth surface.

9. The evidence indicates the depth of the well as 10' with water level being 4. If that be so, it can hardly be conceived as alleged by the prosecution that Renubala could have thought of bringing her life to an end jumping inside the well. Secondly, it would be hazardous to assume such a fact in the absence of positive medical

opinion. No doubt, the doctor found a circular contusion of 2 c.ms. in diameter bluish in colour over the left illias comma, but nowhere in his evidence he was of opinion that this external injury had anything to do with the act of committing suicide or that this injury was responsible for the death.

10. So far as the evidence to the occurrence is concerned, it is appropriate to discuss the evidence of PWs 2 and 3, the two neighbours who immediately arrived at the spot. Both of them were subjected to lengthy cross-examination by the prosecution as they resiled from their statement under Section 161, Cr.P.C. The material part of the evidence of PW 2 was that, the occurrence took place about nine months back in December, 1992 at about midnight. He heard the sound of something falling into the well in front of his house. He rushed to the well and with the help of a torch light he could see a lady floating in the well. He called PW 3 who came along with others. PW 3 went inside the well and brought back Renubala. She was senseless. When she regained sense, she enquired of her son and, according to this witness, she stated that while she was moving around the well with her wailing son both slipped into the well. On hearing this PW 3 went inside the well and brought out the baby who was found dead. When she knew this, she struck her head on the floor and died.

11. PW 3 corroborated the evidence of PW 2 in the same manner. Both of them were allowed to be cross-examined by the prosecution. But nothing has been brought out in the cross-examination to support the prosecution case; Therefore, it will not be safe to hold that Renubala committed suicide, because of non-payment of the balance money.

12. PWs 5 and 6 are the father and mother of deceased Renubala. Both stated about the demand for dowry and the complaint by deceased that she was ill-treated by the in-laws.

PW 5 stated that just before the marriage there was a demand of Rs. 10,000/- from the side of the bridegroom out of which Rs. 7,000/- was paid and the rest Rs. 3,000/- was promised to be paid later on. But when this was not paid, Renu complained that her in-laws tortured her for which she was forced to commit suicide. PW 6 the mother also stated the same thing. If we accept the evidence of

both, the only thing established is that they had failed to pay the balance amount of Rs. 3,000/-. But there is absolutely no evidence as to how and in what manner she was ill-treated or tortured by the in-laws. In other words, there is no evidence from the side of these two witnesses or the evidence of any neighbours that Renubala at any time was assaulted or deprived of her fooding and clothing. PW 7, the nephew of PW 5 only stated about his casual visit to Renubala but yet did not state of having witnessed any such ill-treatment or torture.

13. Learned Counsel for the State referring to para 18 of the judgment of the Trial Court submits that the letter dated 17.12.91 (Ext. 2) written by deceased Renu to her father (PW 5) sufficiently proves the case of ill-treatment and torture. No doubt the contents of the letter brings out certain allegation of ill-treatment by in-laws, but the very fact of writing and posting of such letter becomes doubtful for the reasons given below :

The doctor's post-mortem report indicates that the child was aged about nine months as on 29.12.92, the date of occurrence. Therefore, he would have born sometime during January or February, 1992. Both PWs 5 and 6 stated that Renu was taken to their house 5 to 6 months prior to the date of birth of the child. PW 6 specifically stated that about 16 months prior to death, Renubala had gone to her house for delivery. Therefore, it can safely be concluded that the deceased was with her parents sometime during the month of September^ 1991. The fact of Renubala addressing a postal letter to her father during the month of December, 1991, while precisely at this time she was staying with him because highly improbable. Therefore, in the absence of any cker corroborative evidence, the letter is of no help to the prosecution in proving the case of ill-treatment or torture.

14. Lastly, I have no reasons to differ from the proposition laid down in the cases of Keshab and Sham Lal (supra) referred by Mr. Mohapatra that the proximity of time between the alleged ill-treatment and time of death is a highly relevant factor and is an essential and necessary evidence for proof of a case of dowry death.

15. In the present case, both PWs 5 and 6 have stated that about one month after delivery Renubala was sent back to the house of the appellants. I have already fixed the time during which Renubala could be with her parents i.e. from

September, 91 till January-February, 92. Her time of return to the in-laws' house must have been some time in the month of April or May, 92. There is no evidence worth the same fact from April, 92 till the occurrence in December, 92 Renubala at any time was ill-treated or tortured. The facts and circumstances narrated in the two decisions cited by Mr. Mohapatra aptly apply to the facts of the case at hand. Thus, the prosecution having failed to prove the case, the appellants are entitled to acquittal.

16. In the result, both the appeals are allowed. The conviction and sentence of the appellants are set aside. They are acquitted of all the charges. Bail bonds executed stand discharged.

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