

Umapada Roy Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Oct-14-2015

Appellant : Umapada Roy

Respondent : State of Jharkhand

Judgement :

1 Cr. Appeal (D.B.) No. 1126 of 2006 ... (Against the judgment of conviction and order of sentence dated 30.03.2006 passed by the Additional Sessions Judge, Fast Track Court- No.I, Dhanbad in S. T. No. 89 of 2003.) ... Umapada Roy, son of Kisto Roy, resident of Village- Ledaharia, Ghatwartola, P.O. & P.S. Nirsa, District- Dhanbad . Appellant Versus The State of Jharkhand ... Respondent For the Appellant : Ms. Nalini Jha, A.C. For the Respondent : Mr. Vijay Kumar Gupta, A.P.P. PRESENT HON'BLE MR. JUSTICE R.R. PRASAD HON'BLE MR. JUSTICE PRAMATH PATNAIK

JUDGMENT

By Court : The appellant Umapada Roy was put on trial on the accusation of committing murder of his wife Karmi Ghatwarin. The trial Court, having found the charge being proved convicted the appellant under section 302 of the Indian Penal Code vide its judgment dated 30.03.2006 and on the same day sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one year.

2. It is the case of the prosecution, as has been made out in the fardbeyan (Ext.4) that Karmi Ghatwarin (deceased), the daughter of the informant Satish Rai-P.W.2 had been married to the appellant 7 to 8 years before. Out of their wedlock, one son and one daughter begotten. Over the passage of time, the appellant started raising doubt over the character of his wife and thereby, he used to assault her. Six days before the deceased was done to death, Ashok Roy-P.W.1, cousin of the deceased had visited the place of the deceased to whom she narrated that she is being subjected to torture by her husband. This was communicated by Ashok Roy-P.W.1 to the informant Satish Rai -P.W.2 and on hearing this he was making plan to visit his daughter but in the meantime two persons came on 28.10.2002 and informed him that his daughter has been killed by her husband. The informant-Satish Rai-P.W.2 went to the place of his daughter and gave his fardbeyan to S.I., Sanjay Kumar Singh-P.W.8, Officer in charge of 2 Kalubathan outpost on 28.10.2002 at about 7.00 p.m wherein he stated about the incident as disclosed above.

3. On the basis of such fardbeyan, a formal F.I.R. (Ext.5) was drawn. Said Sanjay Kumar Singh-P.W.8 took over the investigation during which he held inquest on the dead body of the deceased and sent the dead body for postmortem examination which was conducted by Dr. Shailendra Kumar-P.W.7, who on holding autopsy on the dead body did find the following injuries: Incised wound 3 x 1 x bone deep over the neck placed obliquely. Vessels underlying neck were found cut. The doctor issued postmortem report (Ext.3) with an opinion that the death was caused due to shock and haemorrhage on account of aforesaid injuries caused by heavy sharp cutting weapon.

4. Meanwhile, the I.O- P.W.8 seized earth smeared with blood and also basuli/hasuli in presence of P.W.5- Rampad Rai under seizure list Ext.2/1. After completion of the investigation, when the charge-sheet was submitted, the court took cognizance of the offence against the appellant and in due course when the appellant was put on trial the prosecution examined as many as nine witnesses. Of them, P.W.1-Ashok Roy, the cousin of the deceased, P.W.2-Satish Rai (informant), the father of deceased and P.W.3- Subhas Rai, the brother of the deceased are the witnesses on the point that the appellant was in habit of

subjecting his wife to assault. P.W.1-Ashok Roy has categorically deposed that six days before the occurrence when he had gone to the house of the deceased, deceased told him that she is being subjected to torture. When Ashok Roy-P.W.1 came back, he informed about it to P.W.2-Satish Rai, the father of the deceased and also to P.W.3-Subhas Rai, the brother who has also stated by referring to the statement of Ashok Roy-P.W.1 that deceased was being subjected to torture by the appellant. P.W.4-Smt. Kajal Rai and P.W.6-Aghanu Rai are the hearsay witnesses.

5. After the closure of the prosecution case, when the appellant was questioned under Section 313 of the Cr.P.C. over the incriminating evidences appearing against him, he denied. Thereafter, the trial court taking into account the evidence of P.Ws.1, 2 and 3 with respect to deceased being tortured frequently by the appellant arrived at to a conclusion that it could be only the appellant who committed murder of his wife and thereby, recorded the order of conviction and sentence, which is under challenge. 3 6. Ms. Nalini Jha, learned counsel appointed as Amicus Curiae submits that there has been absolutely no evidence to the effect that it was the appellant who committed murder of his wife. Only evidence which is there on the record is that, the appellant used to subject his wife to torture but that also does not appear to be consistent and moreover that subjection to cruelty by the appellant to his wife appears to be the solitary act, which would never lead to conclusion that it was the appellant who killed the deceased and thereby the trial court committed illegality in recording the order of conviction and sentence.

7. As against this Mr. Vijay Kumar Gupta, learned A.P.P appearing for the State submits that the appellant was not happy with his wife and thereby, he frequently used to subject his wife (deceased) to assault and thereby, in all probability it could be only the appellant who committed murder of his wife.

8. Having heard learned counsels appearing for the parties and on perusal of the record, we do find that the finding of trial court is based on the evidence of P.W.1-Ashok Roy, P.W.2-Satish Rai and P.W.3-Subhas Rai but they have simply testified that the appellant used to subject the deceased to torture. The witnesses are

telling about this fact on the basis of the version of P.W.1-Ashok Roy, who had been told by the deceased of being assaulted. But, from the evidence of the father of the deceased P.W.2-Satish Rai, it does appear that the act of the appellant of subjecting the deceased to assault was recent one as he in the cross examination has admitted that when the deceased had come two months before she had not made any complaint about she being subjected to cruelty by the husband.

9. Thus, the only circumstance, which has been appearing in this case against the appellant is that the appellant had started subjecting the deceased to assault recently and when the deceased was found being killed, the blame was put upon the husband to have killed her. But, there has been absolutely no evidence either direct or circumstantial to the effect that it was the appellant who killed the deceased. The sole circumstance as stated above cannot be sufficient to hold the appellant guilty for committing murder of his wife. The trial court did not take into account all these aspects of the matter and thereby, committed illegality in recording the order of conviction and sentence, which is hereby set aside. 4 10. Accordingly, the appellant is acquitted of all the charges and is directed to be released forthwith, if not wanted in any other case.

11. Thus, this appeal stands allowed. (R.R. Prasad, J.) (Pramath Patnaik, J.)
Jharkhand High Court, Ranchi Dated 14th October, 2015 Saket/N.A.F.R

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