

(2008) 03 OHC CK 0007
In the Orissa High Court
Case No : JCRA No. 153 of 1999

Akshya Panda and Another		APPELLANT
	Vs	
State of Orissa		RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2008) 40 OCR 347

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : Savitri Ratho, for the Appellant;

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This appeal is directed against the judgment and order of conviction and sentence dated 22.5.1999 passed by the learned Sessions Judge, Sundargarh in Sessions Trial No. 104 of 1997 convicting both the Appellants for commission of offence u/s 302/34 of the I.P.C. and sentencing them to imprisonment for life. They have also been convicted for commission of offence under Sections 201/498-A of the I.P.C. and have been sentenced to imprisonment for three years on each count, but the sentences have been directed to run concurrently.

2. Appellant No. 1 is the husband of deceased where as Appellant No. 2 is the mother-in-law of the deceased. The other co-accused persons, namely, Harekrishna Panda, Rajani Panda and Sarojini Panda, acquitted by the Trial Court, are also in-laws of the deceased. All the accused persons were charged for commission of offence u/s 302/34 of the I.P.C. for having killed intentionally the deceased-Dhaneswari Panda, in furtherance of their common intention and also u/s 201 of the I.P.C. for causing disappearance of evidence. They were also charged u/s 498-A of the I.P.C. for causing cruelty and harassment to the deceased before she was killed. Case of the prosecution is that on 21.4.1996 the deceased was given in marriage with Appellant No. 1 and at the time of marriage

besides other articles, cash of Rs. 9000/- was given as marriage presentation to the father of Appellant No. 1 as per his demand and the parents of the deceased also agreed to give a gold chain during Dusahara festival. After the marriage the couple visited the house of the informant twice and during the said visit the deceased complained of mental torture on account of non-fulfillment of dowry demand relating to gold chain. When the matter stood thus few days before Raja festival, father of the deceased approached the accused persons to leave the deceased to celebrate Raja festival with him and the family members. However, the accused persons refused to leave the deceased and two days later she was sent along with accused Sarojini with instruction to live in her father's house for two days, so that part of Raja festival can also be celebrated in the in-law's house. Similarly during Dusahara also the informant approached the accused persons to get the deceased to his house so that they can give her a gold chain of her choice, but the accused persons refused to send the deceased to her parents house. On 14.12.1996 early morning the informant got a message over phone about the death of his sister. Hearing this the informant and his mother proceeded to the house of the accused persons and they found the deceased lying dead with burn injuries on the back side of the house of the accused persons. Suspecting foul play the informant, who is the brother of the deceased, immediately proceeded to K. Balanga Police Station and presented a report (Ext. 1). On the basis of the report, a case was registered, investigation was taken up and on completion of investigation charge-sheet was filed.

3. The prosecution examined as many as 13 witnesses to prove the charges and out of 13 witnesses P.W. 1 is the brother of the deceased and is also the informant. P.Ws. 2 and 3 are mother and father of the deceased respectively. P.W. 4 is an independent villager who reached the spot and intimated about the incident to the informant over phone. P.Ws. 5 and 6 are the witnesses to the inquest. P.W. 7 is the priest who had performed marriage and P.Ws. 8 and 9 are witnesses to the seizure of some articles. P.W. 10 is the doctor who had examined the Appellant No. 2 and P.W. 11 is the doctor who conducted post-mortem examination of the deceased. P.W. 12 is the person who had witnessed seizure of wearing apparels of the deceased and P.W. 13 is the I.O.

All the accused persons including the present Appellants pleaded innocence and accused Harekrishna Panda, father of Appellant No. 1 took the plea of alibi. Accused Rajani Panda and Sarojini Panda took a plea that in the night of occurrence they were staying in another house and noticed the dead body next day morning.

Trial Court on the basis of evidence adduced on behalf of the prosecution found both the Appellants guilty of the charges as indicated earlier, but acquitted rest of the three accused persons.

4. Learned Counsel for the Appellants assails the impugned judgment on the ground that undisputed the death of the deceased was within 7 years of her marriage but no charge was framed for commission of offence u/s 304-8 of the

I.P.C. Charge u/s 302/34 of I.P.C. having been framed on the basis of the evidence of P.W. 11, it was the duty of the prosecution to prove that it is the Appellants who had committed murder of the deceased. Submission of the Learned Counsel for the Appellants is that except the evidence of P.W. 11 which indicates that the death of the deceased was homicidal, there is no other evidence to connect both the Appellants with the alleged offence and therefore they could not have been convicted for commission of offence u/s 302/34 of I.P.C. It was also submitted by the Learned Counsel for the Appellants that so far as offence u/s 201 of I.P.C. is concerned, there is nothing on record to show that both the Appellants tried to wipe out the evidence in order to screen themselves from legal consequence. So far as offence u/s 498-A of I.P.C. is concerned, it was also contended by the Learned Counsel for the Appellants that the evidence in this regard is not consistent and therefore both the Appellants could not have been conviction for commission of offence u/s 498-A of the I.P.C. Learned Counsel for the State submitted that undisputedly on the date of occurrence the deceased was in the house of the Appellants and her dead body was found in the morning lying with burn injuries at the back side of the house of the Appellants. Since there was none else in the house, the Appellants alone could have committed murder of the deceased and therefore the Trial Court was justified in convicting them for commission of offence u/s 302/34 of I.P.C. It was also contended that from the evidence of P.W. 11, it appears that the deceased had been strangled first and after her death, kerosene was poured and the dead body was set to fire. It is, therefore, clear that both the Appellants were responsible for commission of offence u/s 201 of I.P.C. Similarly there being demand of dowry and the deceased having been mentally tortured for nonfulfillment of dowry demand, their conviction u/s 498-A is also justified.

5. Undisputedly, dead body of the deceased was found on the back side of the house of the Appellants with burn injuries. P.W. 11 who conducted post mortem examination found a cut injury on the sole of right foot and another cut injury on heel of left leg apart from two other burn injuries. He was of the opinion that the deceased died out of strangulation and asphyxia. He was of the view that the cut injuries and the laceration over the neck were anti-mortem in nature and the burn injuries were post-mortem in nature. On the basis of such evidence of P.W. 11. Trial Court found that death of the deceased was homicidal one. On careful examination of P.W. 11, we do not find any material in cross-examination to discard his opinion that the deceased died due to strangulation and asphyxia and the burn injuries were post-mortem in nature. Consequently the finding of the Trial Court that death of the deceased was homicidal death suffers from no infirmity.

Having held that the deceased died a homicidal death, the Court is now called upon to see as to who is the author of the crime. In this regard Learned Counsel for the State submitted that in the night of the occurrence the deceased was in the house of the Appellants and it is the Appellants who must have committed murder of the deceased. He also referred to the evidence of P.W. 4 and stated

that blood stains were found from the room to the place where dead body was found, Which suggests that the deceased was killed in the room and was dragged to an open space where after she was put to fire. P.W. 4 in his deposition has stated that on 14.12.1996 he had come to Tea stall for taking tea and after getting information about the incident he went to the spot. He found a polytheism lying on the dead body of the deceased, but her face and hands were visible, tongue had protruded outside and there were some burnt clothes and smoke was coming out of it. Having marked the burn injuries he asked the Appellant No. 1 as to whether he had sent information to his father-in-law's house or not and the Appellant No. 1 having told him that no such information had been sent, he requested Station Master of Bimlagarh to inform father of the deceased that she has been killed by fire and accordingly the Station Master obliged. He has stated that on 15.12.1996 police held inquest over the dead body and he signed it. He has also stated that police had seized one Jarkin containing kerosene oil, one Dibiri, one match box, one banian stained with blood and half burnt clothes from the place of occurrence. He has also stated that there were blood stains from the room till the place of occurrence and the blood stains were collected by the Scientific person in presence of police. Sample earth collected did contain blood but the origin could not be detected. Other sample earth marked Ext. A/1 did not contain any blood. Banian stated to be stained with blood did contain human blood but there is no opinion with regard to the grouping of the human blood found on the said banian. Chemical report in "this regard clearly negatives the evidence of P.W. 4 that blood stains of human being were found from the room till the place of occurrence which were collected by the Scientific Officer. It is a fact that the deceased died homicidal death while she was in the house of Appellant No. 1 P.W. 1 is the brother of the deceased and is also the informant. In cross examination he has stated that Harekrishna Panda with his family members have been residing in two houses at Bimlagarh. In the house of Ratan Munda, accused Ranjan Rajani Panda, Sarojini Panda, present Appellant No. 1 and the deceased were staying apart from two other persons, namely Amiya Kumar Panda and Sanjaya Panda who were not charge-sheeted. Father-in-law of the deceased, namely Harekrishna Panda was staying with the Appellant No. 2, his wife and their elder daughter in a separate house belonging to one Nakula Sahu. From the evidence of P.W. 1 it is clear that in the house where death took place Appellant No. 2 was not staying and there is no evidence on record to show that in the night of occurrence Appellant No. 2 had gone to the house of Appellant No. 1. Moreover, apart from Appellant No. 1 others were also staying in the said house as deposed to by P.W. 1 and therefore in absence of any evidence to the effect that it was the Appellant No. 1 alone who was staying with the deceased in the said house, allegation of commission of murder of the deceased cannot be attributed to Appellant No. 1 alone. We are, therefore, of the view that there is considerable force in the contention of the Learned Counsel for the Appellants that the prosecution has not been able to prove the charge u/s 302/34 of I.P.C. against both the Appellants for the reasons stated above. Prosecution having failed to prove that both the Appellants were responsible for

causing death of the deceased, question of wiping out evidence in order to screen themselves from legal consequences does not arise and therefore their conviction u/s 201 of I.P.C. also cannot be sustained. There is also no material on record to show that it is the Appellants who had killed the deceased and tried to give it a colour of suicidal death by burning. The house in which the dead body was found was not occupied by Appellant No. 1 and the deceased only and Ors. were also residing in the said house. Therefore, involvement of others in commission of the alleged offence cannot be ruled out. It was the duty of the prosecution to prove the charge and it is found that prosecution failed to do so.

6. So far as offence u/s 498-A of the I.P.C. is concerned, P.W. 1, brother of the deceased, has stated that the deceased had complained before them that she was being harassed by parents-in-law and Ors. due to nonfulfillment of demand of gold necklace. He has also stated that once he had gone to Appellant No. 1 to bring her sister during puja, but the accused persons did not allow her sister to come with him. P.W. 2 is the mother of the deceased who has stated that after marriage the deceased was complaining before her that she was being ill-treated by parents-in-law and other members of the family due to non-fulfillment of demand of gold necklace. P.W. 3 is the father of the deceased who has also corroborated evidence of P.Ws. 1 and 2 in this regard. On careful scrutiny of cross-examination of these three witnesses, we find nothing to disbelieve their statement that for non-fulfillment of dowry demand, such as, gold necklace, the deceased was being harassed by the Appellants. We are, therefore, of the view that there is sufficient material in this regard and conviction of both the Appellants u/s 498-A of the I.P.C. was justified.

7. In view of the discussions made above, judgment and order of the Trial Court convicting both the Appellants for commission of offence under Sections 302/201/34 of I.P.C. is set aside and their conviction u/s 498-A of the I.P.C. is sustained. Both the Appellants were sentenced to imprisonment for three years each for their conviction u/s 498-A of I.P.C. As it appears from the record Appellant No. 2 was released on bail by this Court on 7.7.2000 vide Misc. Case No. 218 of 2000 and it is stated by Miss Ratho, Learned Counsel appearing for both the Appellants that by the time she was released on bail pursuant to order dated 7.7.2000, she has served sentence of about four years. Appellant No. 1 who was not granted bail is still in custody and has completed more than four years of Imprisonment. We, therefore, direct that if the Appellant No. 1, who is stated to be in custody, has already served three years of imprisonment for his conviction u/s 498-A of the I.P.C., be set at liberty forth with, if his detention is not required in any other case. If Appellant No. 2 has already served the sentence of three years, no further step is called for.

8. Appeal Partly Allowed.