

(2006) 09 JH CK 0043
In the Jharkhand High Court
Case No : Criminal Appeal No. 312 of 2002

Anand Mahato @ Parsuram Mahato	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2007) CriLJ 657 : (2006) 4 JLJR 581 : (2006) 4 JCR 314 : (2006) 3 AIRJharR 703

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : R.C.P. Sah, for the Appellant; I.N. Gupta, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Sole appellant Anand Mahato stands convicted for the offence under Sections 304-B and 498-A of the Indian Penal Code and sentenced to serve rigorous imprisonment for life and two years respectively, by the Session Judge, Seraikella-Kharsawan in Session Trial No. 208 of 2001.

2. The prosecution case, in short, is that the appellant was married with Rupali Mahato, the daughter of informant Madhu Sudhan Mahato in June 1998. It is further stated that two months prior to this incident, appellant started demanding one motorcycle and cash of Rs. 20,000/- as dowry since the marriage of the son of the informant has been finalized. According to the informant, he assured the appellant to fulfill the demands after two-three months of the marriage. This marriage was solemnized on 25.2.2001 after which the appellant took away his wife on 28.2.2001 threatening the informant. According to informant, on 15th of March 2001, the appellant came to him and again demanded motorcycle and cash. It is further alleged that when the alleged

demand could not be fulfilled, the appellant left the house of the informant threatening that he will now receive the dead body of his daughter. The informant sent Bijendra Mahato (PW 4) to get him seen off on his scooter. The next morning on 16.3.2001, he received information that the appellant and her-in-laws killed his daughter by burning. The wife and brother of the informant went to T.M.H., Jamshedpur, but they could not see the dead body. Thereafter on 17th of March 2001, the dead body was handed over to the appellant's family after post-mortem. The informant further alleged that earlier also he has handed over Rs. 30,000/- in cash to the appellant and his daughter.

3. This statement was given to the police by the informant on 21.3.2001, on the basis of which, Raj Nagar Police Station Case No. 8 of 2001 under Sections 304-B of the Indian Penal Code was registered against the appellant and his parents as well as brother. The police investigated the case and finally submitted charge-sheet against the appellant and his father, while investigation continued against his mother and brother. The case of the appellant was committed to the Court of Sessions wherein the appellant along with his father was charged under Sections 304-B/34 and 498-A of the Indian Penal Code on 4.12.2001 by the learned Sessions Judge, Seraikella. The appellant pleaded not guilty and claimed to be tried. The learned trial Court after examining the witnesses found and held that appellant guilty under Sections 304-B and 498-A of the Indian Penal Code while acquitting the father of the appellant from these charges.

4. The present appeal has been preferred by the appellant on the grounds that the learned lower Court has misconstrued the materials on record to convict the appellant. It is also asserted that the prosecution story suffers from uncorroborated evidence as well as positive assertion that the appellant has demanded dowry and tortured the deceased for non-fulfillment of the same. Mr. R.C.P. Sah, learned Counsel for the appellant stressed before us that the First Information Report was lodged after five days and it suffers from non-examination of probable witnesses. According to the learned Counsel, story of prosecution should not have been accepted because it lacks of assertion that the deceased was tortured just before her death for non-fulfillment of dowry demand. It is also submitted that PW 3 Durga Charan Mahato, brother of the deceased, has reported the matter to police at T.M.H., Jamshedpur regarding the actual cause of death of Rupali Mahato and that has not been brought on record by the prosecution. It is also submitted that the death might have been caused because of accident and in worse circumstances, suicide committed by the deceased. Much stressed has been placed on the statements of PW 1, PW 3 and PW 4 that they had not knowledge and information regarding the ill-treatment committed on the deceased by the appellant before her death. Therefore, the learned trial Court has committed a mistake of law by drawing adverse presumption of guilt against the appellant.

5. Learned A.P.P. for the State opposed these contentions on the ground that the death of wife of the appellant in unnatural circumstances, with 100% burn

injuries, has not been explained by the defence. Therefore, the conviction should be upheld.

6. We have anxiously considered the submissions made on behalf of the learned Counsel for the appellant along with the material on record. Deceased Rupali Mahato was found dead with 100% burn injuries by PW 7, the doctor. It is also apparent from the post-mortem report (Ext. 4), which further mentions two weeks' embryo in the uterus of the dead body. The suggestion that the deceased might have committed suicide, therefore, appears afterthought. In case of accidental burns, the appellant and his family members must have reported the incident to police but no such document has been brought on record by the defence neither it has been asserted even during the statement recorded u/s 313 of the Code of Criminal Procedure of the appellant and his father- before the trial Court, in spite of specific questions put to them. The appellant has only stated that he does not know. PW 6, the Investigating Officer of this case has not given any details in his cross-examination as to what happened to the statement given by PW 3 Durga Charan Mahato on 17th of March 2001 as no case was instituted on this statement. He has not even cared to examine this witness, but the latches on the part of the Investigating Officer cannot be made a ground to accept the suggestion made by the counsel of the appellant.

7. PW 5 Madhu Sudhan Mahato, the informant has supported his earlier statement made before the police. He further asserted that on 15th of March 2001, the appellant has arrived at his house and alleged that deceased was not having good character. According to him, he asserted that the deceased would not arrive at the house of the informant in future and he should received her dead body. He further asserted that after abusing him. he left the house on which he sent PW 4 to see that he reaches the bus stand properly. According to him, after getting information that his daughter was dead on 16th of March 2001, he became senseless and could move only after four days to report the matter to the police. This witness has been cross-examined at length, in which he has admitted that the girl has also complained earlier vide para 6 regarding the demands of dowry. He further denied that Durga Charan Mahato has given any statement to police on 16.3.2001.. PW 4 Bijendra Mahato has supported in his examination-in-chief the statement of PW 5 and confirmed that he got the appellant reached to Kandra More to catch the bus. Though he admitted that he cannot say how Rupali used to live in her sasural vide paras 2 and 7.

8. PW 1 Loknath Mahato and PW 2 Jawarharlal Mahato are the witnesses on the inquest report prepared on 17.3.2001 by one Bajrangi Singh in TMH, Jamshedpur. PW 1 has been declared hostile, as he could not support the informant in details. However, he admitted in para 3 that on 15.3.2001, the appellant has arrived at the house of the appellant and threatened him to see the dead body of Rupali Mahato, if the demand was not fulfilled. PW 2 has seen the dead body in T.M.H., Jamshedpur and signed over the inquest report. He supported the informant vide paras 5 and 6 of the cross-examination. PW 3, the

brother of the deceased has not supported the informant, but he was not declared hostile and he admitted in cross-examination that his statement was not recorded by the police. PW 8 Lal Mohan Mahato, the cousin brother of the informant has supported the informant in details.

9. These facts and circumstances have been discussed by the trial Court in paragraph Nos. 13 and 14 of the impugned judgment. The trial Court has opined that in such cases where death occurred within three years of the marriage with allegation that the dowry demands were made, which could not be fulfilled and wife of the appellant dying with 100% burn injuries in unnatural circumstances, inference has to be drawn against the appellant that he was guilty u/s 304-B of the Indian Penal Code. We have also scrutinized the evidence available on the record as discussed in a foregoing paragraph. The consistent story made out by the informant, Madhu Sudhan Mahato, the father of the deceased was supported by PW 4 and PW 8 that prior to death of Rupali Mahato, the appellant has come to the house of the informant on 15.3.2001 and went away threatening that the informant would see the dead body of his daughter because he was not provided with the money and motorcycle in spite of marriage of Durga Charan Mahato. The death has occurred in the next morning and no explanation is brought on record by the defence in spite of having all opportunities to say what has happened. The defence has simply kept mum and denied even knowledge, which is apparently not sustainable. The death occurred in the house of the appellant. If the lady got burnt due to accident or suggested suicidal attempt, it was for him to explain but instead of any such attempt, they just avoided the Investigating Agency and the trial Court to give a true picture of the incident. The prosecution, therefore, has been able to prove beyond all reasonable doubts that Rupali Mahato dying within three years of marriage in unnatural circumstances, just after the demand of motorcycle and cash were not fulfilled, presumption u/s 113-B of the Indian Evidence Act has to be drawn against the appellant.

10. The trial Court has acquitted the father of the appellant keeping in view the materials on record, but found and held the appellant guilty under Sections 304-B and 498-A of the Indian Penal Code. We do not find any material contradictions on the record to disagree with the view taken by the trial Court.

11. Having considered all the facts and circumstances mentioned above, we are of the considered view that the conviction of the appellant under Sections 304-B and 498-A of the Indian Penal Code does not require any interference and the same is hereby affirmed.

12. At this stage, learned Counsel for the appellant submitted that the appellant has remained in custody right from the date of institution of the present case and has to look after his son also left over by the deceased. Learned A.P.P. opposed this suggestion.

13. After going through the materials on record, we are of the view that the ends of justice would be served adequately, if the sentence is modified to undergo

rigorous imprisonment for ten years u/s 304-B of the Indian Penal Code and two years for the offence u/s 498-A of the Indian Penal Code. However, both the sentences shall run concurrently.

14. Accordingly, this appeal is dismissed with modification in sentence as stated above. Let a copy of this order along with the record of this appeal be sent back to the learned lower Court for information and needful.