

(2016) 11 CHH CK 0023
In the Chhattisgarh High Court
Case No : Criminal Revision No. 472 OF 2002

Arjun Prasad Chandrawanshi

APPELLANT

Vs

Dani Ram

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 215
Penal Code, 1860 (IPC) — Section 304B, Section 498A

Citation : (2017) 2 CriCC 348 : (2017) CriLJ 889

Hon'ble Judges : Shri Deepak Gupta, CJ. and Shri Sanjay Agrawal, J.

Bench : Division Bench

Advocate : Shri A.K. Prasad and Shri Rishi Mahobia, Advocates, for the Applicants; Smt. Smita Ghai, Panel Lawyer, for the State; Shri Pradeep Singh, Advocate, for the Respondents Nos. 1 to 4 /(Accused persons)

Final Decision : Allowed

Judgement

Sanjay Agrawal, J.(CAV) - This criminal revision has been filed by the parents of the deceased Chitrarekha under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C") against the judgment dated 27/08/2002 passed by the Second Additional Sessions Judge (F.T.C.) Mungeli in Session Trial No. 200 of 2000, whereby, the respondents Nos. 1 to 4 have been acquitted from the offence punishable under Sections 498-A/34 and 304-B/34 of the Indian Penal Code (hereinafter referred to as "IPC"). The State Government has also questioned the propriety of this judgment while filing the appeal under Section 378 of the Cr.P.C., which is registered as Acquittal Appeal No. 445 of 2010.

2. Since the common questions of law and facts are involved in both these matters, therefore, they are being heard together and disposed of by this common judgment.

3. The undisputed facts are that the respondent No.-2 Narendra was married to deceased Chitrarekha and the allegation levelled against the accused persons are

that immediately after the marriage deceased Chitrarekha has expired on 28.3.2000 in a suspicious circumstances as she was subjected to cruelty and harassment on account of demand of dowry of Motorcycle, Colour T.V., Ornaments etc. Therefore, a charge-sheet under Sections 498-A/34 and 304-B/34 of the IPC was registered against the accused persons.

4. Further prosecution story is that the marriage of deceased Chitrarekha with respondent No.2-Narendra had taken place in the month of Jeth (May June), 1999 and after the marriage, deceased Chitrarekha had gone to her inlaws house, where she was tortured physically and mentally in connection with the demand of Motorcycle, Colour T.V., Ornaments etc. Because of the alleged harassment, the deceased went back to her father's house twice, but at the instance of elder members, she returned back to her in-laws house. At last, when she returned to her in-laws house on 24/03/2000, but, was again tortured there, as a result of which, she expired on 28/03/2000 at about 4 p.m. by poisoning.

5. After receiving the information with regard to the aforesaid incident, the father of the deceased Narad Prasad, maternal grandfather Arjun Prasad Chandrawanshi with other persons rushed to her in-laws house where they found the dead body of deceased Chitrarekha in a suspicious condition. The maternal grandfather of the deceased, namely Arjun Prasad Chandrawanshi had lodged a First Information Report in the Police Station Pandatarai, based on which, a mere intimation was written by the police on 29/03/2000 and an offence punishable under Section 304-B read with Section 34 of the IPC was registered against all the accused persons, who were husband, father-in-law, mother-in-law and brother-in-law of the deceased Chitrarekha as the alleged incident had taken place within a period of seven years of the said marriage.

6. Respondents No.1 to 4 have not accepted the charges as framed and pleaded not guilty by submitting that they have been falsely implicated by the parents of the deceased in connection with the said crime.

7. In support, the prosecution has examined as many as 12 witnesses including father, mother, grandfather and maternal grandfather of the deceased Chitrarekha, while one defence witness was produced by the accused persons in order to establish their innocence in connection with the said crime.

8. After examining the statement adduced by both the parties, the trial Court by its impugned judgment dated 27/08/2002 has acquitted all the accused persons from the offence punishable under Sections 498-A/34 and 304-B/34 of the IPC.

9. Being dissatisfied with the aforesaid acquittal, the parents of the deceased and the State Government have preferred the instant criminal revision and acquittal appeal.

10. Shri A.K. Prasad, learned counsel appeared on behalf of the parents of the deceased and Smt. Smita Ghai, Panel Lawyer appeared on behalf of the State have assailed the judgment impugned by contending, inter alia, that deceased

Chitrarekha had stated to her parents about the alleged demand of dowry by her in-laws all the time and, contended further that she came back to her parents house in three occasions only because of physical and mental torture caused by the accused persons in connection with the alleged demand of dowry and ample evidence in this regard was there as found by the trial Court in its paras-42 and 43 of the judgment. They argued further that the trial Court has failed to consider the statement of Dr. V. P. Jaiswal, who was examined as (PW5), as he opined that there were many ante-mortem injuries on the deceased's body and was a blood clotting there in sub-cutaneous tissue in the right parietal region of her head. Shri Prasad has placed reliance on the judgments of the Apex Court rendered in *Rajinder Kumar v. State of Haryana* (2015) 4 SCC 215 and *Bhupendra v. State of Madhya Pradesh* (2014) 2 SCC 106.

11. On the other hand, Shri Pradeep Singh, learned counsel appearing for the respondents No. 1 to 4/accused persons have supported the impugned judgment by contending that the deceased Chitrarekha had lived with her inlaws house only for eight to ten days and was remained in her parents house for eight months from the date of her marriage and during this period neither any complaint was made by her parents nor any Panchayat meeting was ever convened, would therefore, show that the respondents No. 1 to 4 have been implicated falsely in connection with the said crime.

12. We have heard learned counsel for the parties and have gone through the entire records carefully.

13. The question, which emerges from the above factual aspect and in view of the rival submissions of the parties, is whether the deceased Chitrarekha was ever tortured by the respondents No. 1 to 4 soon before her death as alleged by her parents, and whether that is enough evidence against the accused to convict them of offences punishable under Sections 498-A/34 and 304-B/34 of the IPC. Another issue that arises is whether the accused can be punished in connection with the crime enumerated under Section 306 of the IPC, though no charge was framed in this behalf.

14. In order to ascertain whether respondents No. 1 to 4 have been acquitted rightly by the trial Court in connection with the aforesaid framed offences, it would be necessary to examine the evidence of the parties. If we examine the statement of the father (Narad Prasad) of the deceased Chitrarekha who was examined as (PW3), particularly para-2 of his statement then it would reveal that initially the deceased Chitrarekha had not raised any complaint against her in-laws. The said witness has further deposed in this paragraph that his daughter was driven away from the house by the respondents No. 1 to 4 after assaulting her as the Motorcycle, Colour T.V. and Ornaments, etc, as desired, were not provided to them. His evidence at para- 12 would, however, reveal that the motorcycle was available with his son-in-law (Narendra) even prior to the marriage and that is still available with him. Likewise, the mother of the deceased-Chitrarekha, namely Amrika Bai (PW9) has deposed the same thing by

stating further at para- 20 of her statement that the Panchayat meeting was convened by her father-Arjun Prasad Chandrawanshi (PW4) in this regard, though, neither she nor her husband Narad Prasad (PW3) had attended the same nor had she asked her father Arjun Prasad Chandrawanshi with regard to the outcome of the said Panchayat meeting.

15. Arjun Prasad Chandrawanshi, the maternal grandfather (Nana) of the deceased Chitrarekha, who was examined as (PW4), has deposed that when he asked his granddaughter (Chitrarekha) about her problem she told him that she was ill-treated and assaulted by her in-laws i.e. respondents No. 1 to 4 herein. The other prosecution witness namely Nand Kumar (PW6) has deposed that deceased's grandfather Sagar Singh (PW8) had not informed him that his granddaughter Chitrarekha does not want to go to her in-laws house because of the demand of dowry.

16. Sagar Singh (PW8) the grandfather of the deceased though stated earlier that Chitrarekha had not informed him after returning from her in-laws house with regard to the signs of assault on her face, but, she had informed the witness subsequently that it was caused because her family had not fulfilled the demand of Motorcycle, Color T.V., Ornaments etc. of the accused. This witness, however, has deposed further at paragraph-29 of his evidence that they have neither lodged any report in this regard nor had convened any Panchayat meeting. The other prosecution witnesses have not stated about the alleged demand of dowry.

17. A close scrutiny of the above mentioned prosecution witnesses would reveal that deceased Chitrarekha had stayed eight to ten days only in her inlaws house after the solemnization of her marriage which had taken place in the month of Jeth (May-June),1999. She had stayed most of the time (more than eight months of her marriage) in her parent's house. It is also gathered from the evidence adduced by the prosecution that neither any report nor any complaint was ever made prior to the occurrence of the said incident nor any Panchayat meeting was ever convened in this regard. Besides, the statement of Sagar Singh (PW8), the grandfather of the deceased-Chitrarekha and the statement of her mother Amrika Bai (PW9) are materially contradictory with each other, particularly, with regard to the fact regarding convening of Panchayat meeting as stated by them respectively at Paragraphs-29 and 20 of their evidence.

18. Thus, the aforesaid evidence led by the prosecution would show that the parents of the deceased have not only exaggerated the story falsely with regard to the alleged demand of dowry, but have stated falsely with regard to the fact of convening the Panchayat meeting, would therefore, lead to an irresistible conclusion that the applicants/parents of the deceased were trying to implicate the respondents No. 1 to 4 falsely in respect of the offence framed against them and therefore, their evidence under such circumstances cannot be relied upon. Consequently, the considered opinion of this Court is that deceased-Chitrarekha was neither ill-treated nor was ever subjected to her cruelty soon before her death with regard to the alleged demand of dowry.

19. Shri Prasad, learned counsel for the applicants while relying upon para- 10 of Rajinder Kumar's case (supra), submits that the statement of the family members of the deceased Chitrarekha cannot be discarded merely on the ground that they are the relatives and interested witnesses. However, based upon the evidence which we have discussed in the foregoing paragraphs, the principles laid down in the said decision are distinguishable from the facts involved in the instant case. We are not discarding the evidence of family members of the deceased on the ground that they are the relatives or interested witnesses. This evidence is not being relied upon for different reasons enumerated above. The other decision, Bhupendra's case (supra), as relied further by Shri Prasad, is also of no help as the facts of the said case are entirely distinguishable from the facts of the instant case.

20. In view of the aforesaid discussions and in view of the evidence led in the present case, we are of the considered opinion that respondents No. 1 to 4 have been rightly acquitted by the trial Court in connection with the crime punishable under Sections 498-A/34 and 304-B/34 of the IPC and, we therefore affirm the findings so recorded by the trial Court.

21. As far as the question, as to whether the respondents No. 1 to 4 could be held guilty under Section 306 of the IPC, the evidence of the doctor V.P. Jaiswal (PW5) would be required to be examined. The other issue is whether we can convict the accused of such an offence when no charge has been framed.

22. Dr. V.P. Jaiswal, examined as (PW5), has deposed that he and Dr. Bhaghel both had examined the dead body of the deceased, who was 18 years old and had found several ante-mortem injuries, which were caused by hard and blunt object. He opined further that the cause of death was asphyxia due to poisoning in suspicious circumstances and it was also found that there was a blood clotting in the right parietal region of the skull measuring 5 cm x 4 cm in the sub-cutaneous tissue. It was opined further that the alleged injuries were caused 24 to 36 hours prior to the examination of the dead body of the deceased, which was conducted on 29/03/2000. It is also crystal clear that the deceased expired in her in-laws house due to poisoning.

23. The aforesaid evidence of the doctor cannot be overlooked in examining the crime which is punishable under Section 306 of the IPC merely on the ground that the same has not been framed by the trial Court in view of the provisions prescribed under Section 215 of the Cr.P.C. The said provision is relevant for the purpose and is reproduced herein as under :-

"215. Effect of errors.-No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

24. As regards the interpretation of above mentioned provision, the Supreme

Court in K. Prema S. Rao and Another v. Yadla Srinivasa Rao and Others (2003) 1 SCC 217 has observed in para 22 as under :-

"22. Mere omission or defect in framing charge does not disable the Criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a situation like the one before us. From the Statement of charge framed under Section 304-B and in the alternative Section 498-A IPC (as quoted above) it is clear that all facts and ingredients for framing charge for offence under Section 306 IPC existed in the case. The mere omission on the part of the trial Judge to mention Section 306 IPC with Section 498-A IPC does not preclude the court from convicting the accused for the said offence when found proved."

25. From a perusal of the aforesaid provision and that in view of the principles laid down in the above mentioned case, it is clear that mere omission in framing charge under Section 306 of the IPC would not dis-entitle the Court from examining the same unless the accused was found to be misled by such error or omission.

26. Now, the charges, so framed, by the trial Court are required to be examined in order to entertain as to whether the accused persons have been misled by such error or omission or the same would have likely to occasion into a failure of justice. The charges so framed read as under :-

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27. A close scrutiny of the aforesaid charges would reveal that neither the ingredients required under Section 306 of the IPC is there nor it was apprised to the accused persons. Thus, it is a case where mis-trial was conducted by the trial Court. The offence which were framed and tried by the trial Court were only with regard to the offences punishable under Sections 498-A/34 and 304- B/34 of the IPC in which the accused persons have been acquitted. Therefore, instead of recording any finding with regard to an offence punishable under Section 306 of the IPC, it would rather be necessary for this Court at this stage to remit the matter back to the concerned trial Court, i.e. the Second Additional Sessions Judge (F.T.C.), Mungeli for framing charge under Section 306 of the IPC and for its re-trial.

28. The criminal revision as well as acquittal appeal are accordingly allowed in part in view of the terms mentioned above and Registry is hereby directed to remit the record of the lower Court forthwith to the concerned Court.

29. The parties are directed to appear before the concerned Court of Mungeli on 21/12/2016 for their further trial with regard to the offence punishable under Section 306 of the IPC.

30. A copy of this order be placed on record of Acquittal Appeal No.445 of 2010.