

(2011) 08 PAT CK 0060

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 105 of 2007

Balmiki Ram, Sheo Bachan Ram and Sukari Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304

Citation : (2011) 08 PAT CK 0060

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—The three Appellants, who were charged together for committing the offence under Sections 304B and 201 IPC by the learned Ist Additional Sessions Judge, Buxar in Sessions Trial No. 45 of 2002, by judgment dated 3.1.2007 were found guilty of committing those offences and after being heard on sentence on 8.1.2007, Appellant Balmiki Ram was directed to suffer RI for ten years and two years respectively under Sections 304B and 201 IPC whereas the remaining two Appellants, namely, Sheo Bachan Ram and Sukari Devi were directed to suffer RI for seven years and one year respectively on the two above counts. The three Appellants have filed the preset appeal together to question the order of conviction and sentence.

2. Some of the admitted facts are that the deceased Sita Kumari, who was the daughter of informant Ram Shankar Ram (P.W. 1), was married to Appellant Balmiki Ram on 25.4.2000. It is also not denied that on 6.3.2001 the deceased Sita Kumari was residing in the house of the Appellants and further that she had died there while residing with the Appellants.

3. What is alleged by the prosecution is that after the marriage having been solemnized on 25.4.2000, Bidai of the deceased was to be held on the following day, i.e. on 26.4.2000 but, the accused persons placed a demand for a color

television and a Hero Honda motorcycle and refused to take the lady with them by not allowing the ceremony to be performed. The informant expressed his inability on account of his poor financial condition and that worsened the situation further. However, the villagers and well-wishers of both sides intervened and under an undertaking that the demands could be met within a particular time frame, Bidai ceremony was performed, as a result of which, Sita Kumari was taken to her matrimonial house. While going to her matrimonial house, she was accompanied by her brother Jay Prakash Ram (P.W.9).

4. It is stated that while she was residing in her matrimonial house, she was taunted and tortured and thus, being ill-treated by her inlaws and husband for not bringing the dowry articles but, she kept the acts of torture perpetrated upon her by the accused persons to herself and even her brother who was accompanying her in her matrimonial house, did not relate the story to his parents. It is stated that Dwiragaman was performed on 28.2.2001 and on that occasion, the informant presented to Appellant Balmiki Ram a gold ring and a gold chain, but still could not give a television and a Hero Honda motorcycle, which was earlier promised to be given and for which the accused persons were found agitated at that occasion also. However, the Dwiragaman was performed and on that occasion also P.W. 9 accompanied his sister. The lady was ill-treated and she was beaten up also only for not bringing demanded articles to the accused persons. It is stated that at a particular time when P.W. 9 was away from the house of the accused persons on account of having gone out to play with some others, all the accused persons came together and killed the deceased and, thereafter, threw her dead body in Ganges at a place in between Gahmar and Bara.

5. Having learnt about the incident, the informant along with Srinivas Ram (P.W. 3), the cousin of the informant and his brother-in-law (P.W.2) came to the house of accused persons but found none present there and, ultimately, inferred that Sita Kumari had been killed and her dead body cremated so as to causing disappearance of the evidence of the offence.

6. On the basis of the fardbeyan (Ext.3) of P.W. 1, FIR of the case (Ext.2) was drawn up and the same was investigated into by the police, who after completion of the investigation, sent up the Appellants for trial.

7. The defence of the Appellant was of complete innocence and they suggested that the lady died a natural death and the information about her death was given to her parents, as a result of which, the father of the deceased, namely, P.W. 1 had come to the house of the Appellants and had participated in the cremation of the dead body but, subsequently, they changed their minds to lodge a false report after about seven ? eight days of the occurrence.

8. The prosecution examined ten witnesses for proving the charges which were brought against the Appellants. None of the witnesses was an eye witness and out of the ten, P.W. 4 Kamleshwar Sharma, who was also examined as P.W. 10,

had proved the FIR and fardbeyan, Exts. 2 and 3 respectively besides the case diary on account of non-examination of the I.O.P. Ws. 5, 6, 7 and 8 were the co-villagers of P.W. 1 and had been declared hostile. Thus, the support came from P.W. 1 Rama Shankar Ram, who happened to be the informant of the case. His sala P.W. 2 Ravindra Ram, P.W. 3 Srinivas Ram and in addition to them P.W. 9 Jai Prakash Narain, who is said to have accompanied the deceased on a couple of occasions when she had gone to her matrimonial house, also supported the allegation that the Appellants were demanding a color television and a Hero Honda motorcycle as additional dowry articles and not getting the same, had ill treated and tortured the lady and lastly, killed her and caused disappearance of the dead body by cremating it.

9. The evidence appears consistent as regards demand of dowry in the form of color television and a Hero Honda motorcycle. Jai Prakash Narain (P.W. 9) also stated that he had informed his parents and other relatives about the torture which was heaped upon the lady by her inlaws, like, P. Ws 2 and 3. But, during the course of cross-examination of P.W. 1, the father of the lady, the defence brought on record Ext. A, which is a letter dated 24.8.2000, written by the deceased to Appellant Balmiki Ram.

10. From perusal of the letter, what appears is that the lady ardently desired to join her husband at the place of his posting. It is not denied that the Appellant Balmiki Ram was working in the Provincial Armed Constabulary of the State of Uttar Pradesh and he was residing far away from the lady to whom he was married. The mental state of the lady could be gathered from Ext. A. She appears venting her sentiment on some of the behavior of the Appellant Balmiki Ram, may be, that the husband was not behaving properly or was not living up to the expectation of the wife, who had just been married on 25.4.2000, i.e. about four months prior to the writing of the letter. It may not be irrelevant to point out that as in the case of men so in the case of women, aspirations are always high of the spouse and in case, specially of a lady, when it is found that her aspirations and expectations specially from her husband of behaving affectionately, is not fulfilled the lady is always disturbed, some times to the extent of being depressed and that may be one of the important circumstances in the life of a lady that she could be impelled to end her life. The husband was probably not behaving properly with the lady. This appears coming out from the evidence of P.W. 1 when he was stating in court during his cross examination in paragraphs 12 and 13 that after his daughter had gone to her matrimonial house and finding that the circumstances were not conducive for her to live there, he brought his daughter from there to his house and got her admitted into a particular course in a college. The deceased lived there in his house for about eleven ? twelve months and during that period the Appellant Balmiki Ram came twice to visit his wife. The relationship between the wife and husband was not cordial and the inlaws, i.e. P.W. 1 and others were also not kind to the Appellant Balmiki Ram, which could be exhibited by the statements contained in paragraph 13 of the evidence of P.W. 1 when he was stating to the court that whenever

Appellant Balmiki Ram visited his house, he forbade him to come there. When he came next time on 4.3.2001, he appears not permitting to enter his house but, allowed his entry only on the plea that because it had become night and he had to go home, he thought it better to stay for the night in the house of P.W. 1. This particular circumstance when considered with the statement of the deceased in Ext. A, may give a glimpse not only of the relationship prevailing between the husband and wife, but also the expectation of the wife which is highlighted by some of the statements made by her in the letter. She was informing Appellant Balmiki Ram that if he did not arrange for a proper residence at his place of posting, may be that he would not be seeing her face. These statements have been recorded in Ext. A and it is further found that the sentiment of the lady to join her husband, i.e. Appellant Balmiki Ram was there as she expressed her desire to beget a child out of the wedlock. Circumstances appear coming out that, probably, the Appellant was not in a position to arrange for a space so as to taking the wife along with him and on that account the lady was frustrated and, may be, she was ultimately ending her life.

11. After having considered these circumstances, what I find is that in spite of there being a consistency in the prosecution story that the lady was tortured and ill treated on account of not bringing the additional dowry articles, there might be a probability that there were certain reasons, which I have just stated by making reference to the statements of P.W. 1 as also the contents of the letter that the lady was probably getting frustrated out of the non-union of herself with the husband and probability could be that she could have ended her life.

12. Above could be the reason that the fardbeyan was being given after seven days of the incident. Delays in lodging a report is not always fatal to the prosecution case, but, delay which comes to support certain circumstances which create a probability about the defence story, then the unexplained delay or the explanation which may not be satisfactory, could be another lacuna in the prosecution story.

13. What I find is that there was a probability of the defence version and there may be some other reasons for the death of the lady and after having considered the above facts and circumstances, I find that the conviction of the Appellant under Sections 304B and 201 IPC was not sustainable in law. The Appellants were entitled to get the benefit of doubt and, accordingly, by giving that benefit, they are acquitted of the charges levelled against them.

14. In the result, the appeal stands allowed. The judgment and order of conviction is set aside. Appellant Balmiki Ram is in custody. He is directed to be released forthwith if not wanted in any other case. Rest of the Appellants are on bail. They shall be discharged from the liabilities of their bail bonds.