
(2002) 02 CHH CK 0004
In the Chhattisgarh High Court
Case No : Criminal Revision No. 415 of 2001

Bharat Das and Another

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Evidence Act, 1872 — Section 45

Citation : (2002) 3 CGLJ 215 : (2002) 2 DMC 115 : (2002) 2 MPHT 38

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Fakhruddin, J.—The applicants, father-in-law and mother-in-law of the deceased Sheela, have filed this revision petition against the order dated 30-8-2001 passed by the Second Addl. Sessions Judge, Raigarh in Sessions Trial No. 229/2000, whereby the charges for the offence punishable under Sections 306/34, IPC have been framed against them.

2. According to the learned counsel for the applicants the marriage between the co-accused Pramod and deceased Sheela had taken place 11 years before and as such it is not a case of death within seven years of the marriage u/s 304B of IPC.

3. Learned counsel for the applicants further submits that the deceased was suffering from Malaria and the treatment was going on. He refers to the seizure memo whereby Chloroquine tablets were seized from the cot where the deceased was lying. He read out the autopsy report wherein it was mentioned that the stomach of the deceased was full of undigested rice, subji (kaler, Tamatar & Taroi). While the autopsy was conducted, the following viscera were preserved for chemical analysis - Piece of small intestine, piece of large intestine, piece of right lung, piece of left lung, piece of liver, piece of spleen, pieces of left and right kidney. The deceased died of Asphyxia and Syncope and coma within 24 hours because of poisoning.

4. Shri Naved, learned panel lawyer submitted that pursuant to the order of this Court dated 8-11-2001 the report has been received. The doctors have opined the death as suicidal. Learned Panel Lawyer further submitted that it is a case where the demand of dowry of Rs. 50,000/- was made by the applicants from the deceased. Learned counsel for the applicants on the other hand submitted that there was no demand of dowry at all.

5. Learned counsel for the applicants submits that the applicants have been falsely roped in the alleged offence of suicide. It is said that the death of the deceased might be natural or due to reaction of medicines as the doctors are also not sure about the cause of death of the deceased as they put the question mark in the opinion column of their report that the deceased had died of asphyxia and syncope and coma because of poisoning of suicidal in nature. It is further submitted that the viscera of various parts of the body have been taken and sent to F.S.L. for chemical examination. The said report has not come so far. The prosecution is duty bound and should see that the reports are received expeditiously and in the matters like the present one the same are available at the time of framing of charges so that the parties are not prejudiced. The Court below acted in hot haste in framing the charges. It is a case where unless the report is received, the case of the applicants may prejudice.

6. Under the circumstances, it is directed that if the report is not received, the prosecution shall take appropriate steps. The F.S.L. shall see that the reports are sent back as early as possible preferably within two months from today and if there is a delay, it has to be explained. The parties pray that they may be given liberty to obtain the expert opinion in accordance with law as contemplated u/s 45 of the Evidence Act.

7. Section 45 of the Evidence Act relates to opinion of experts. This Section is relevant which is quoted below :--

"45. Opinions of Experts.-- When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identify of handwriting or finger impressions the opinions upon that point of persons specifically skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called Experts."

8. The aforesaid Section 45 also contains an illustration, which is quoted below:--

"Illustrations:

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison, by which A is supposed to have died, are relevant."

The aforesaid illustration to Section 45 goes to show that on a question of death caused by poison, the opinions of experts as to the symptoms produced by the poison are admissible.

9. For the aforesaid purpose, viscerae of various parts of the body of deceased were preserved for chemical analysis. The reports of them are very material and pertinent.

10. At this stage, learned counsel for the parties in view of the above circumstances submits that it would be just and proper if the matter is remitted back to the Trial Court.

11. Having thus considered the facts and circumstances and the material available on record, the revision is allowed and the case is remitted back for considering the matter afresh in accordance with law. The parties if so desire may also obtain the opinion of experts in accordance with law.

12. It is observed that in many cases where viscerae are taken and are sent for expert's opinion and the reports are not received, some delay occurs and the matter remains pending for long and in many times persons remained in jail and at the time of framing of charges even parties are deprived of the same. Under the circumstances, wherever viscerae are taken and sent for opinion of the experts, the prosecution would see that the reports are received without undue delay, so that the parties may not be deprived of the same.

13. Copy of this order be sent to State Government through Home Secretary for compliance.