
(2008) 07 JH CK 0050
In the Jharkhand High Court

Brahamdeo Prasad Gupta and Others	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 201, 302, 306, 34

Citation : (2008) 4 JCR 697

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—The appellants have challenged the judgment of conviction and order of sentence, passed by the Court of the learned 6th Additional Sessions Judge, F.T.C., Palamau in Sessions Trial No. 244 of 2003. whereby they were convicted for the offence u/s 306 of the IPC and sentenced to undergo imprisonment for seven years and further convicted for the offences under Sections 498-A, 120-B and 201 of the IPC and sentenced to undergo imprisonment for two years.

2. The case against the appellants was registered on 1.3.2001 at Chhatterpur Police Station on the basis of the First Information Report lodged by the informant Arun Chandra Gupta (PW 7). The informant's specific case is that his sister, namely Santosh Devi was married to the appellant No. 2, Sunil Kumar Gupta in the year 1992. The deceased used to live at her matrimonial house in the company of her husband and her parents-in-law, namely, the appellant No. 1 and the appellant No. 3 respectively. In the morning of 27.2.2001, the younger brother-in-law of the deceased conveyed telephonic information to the informant that his sister-in-law, namely, the deceased Santosh Devi had died.

3. On receipt of the information, the informant along with some close relatives went to the matrimonial village of his deceased-sister, and was informed by the father-in-law (appellant No. 1) in the night of 27th February, 2001 the deceased

suddenly, developed acute abdominal pain and was found dead in the morning. The informant has accused the members of the matrimonial family of the deceased of not having provided prompt medical aid to the deceased. He has also alleged that the behaviour of the members of the matrimonial family towards the deceased was not good and they used to torture her and information regarding such torture was conveyed to the informant by a letter addressed to him. On his allegation that the deceased was killed by her husband and in-laws pursuant to a conspiracy hatched out between them and such allegation being based on the fact that the funeral ceremony of the deceased was hastily performed, the FIR was lodged and on the basis of the FIR, the case was registered against the present three appellants.

4. All the three appellants were put on trial for the offences under Sections 302/34, 201, 498-A and 120-B of the IPC.

5. The defence of the appellants at the trial was that the deceased had died a natural death on account of acute appendicitis and on the night preceding her death, she had developed acute abdominal pain and while she was being taken to the hospital in the early hours of morning, she died and she was declared brought dead by the doctor, who examined her at the hospital.

6. The further case of the defence is that when the deceased had complained about acute abdominal pain, the appellants had promptly invited the local doctor to attend and treat her and it was on the advice of the local doctor that they had taken her initially to the local hospital but on being advised that she should be taken to the Sadar Hospital, Daltonganj, she was taken there, but she died on the way.

7. At the trial, altogether eight witnesses were examined by the prosecution. Out of them, PW 1 is the sister-in-law (gotani) of the deceased; PW 2 is the cousin sister of the deceased. She was married to one of the brothers of the husband of the deceased. PW 3 is the husband of PW 1 and elder brother of the husband of the deceased. PW 4 is the minor son of the deceased. The remaining four witnesses constitute a separate set of witnesses examined by the prosecution. PW 5 and PW 6 happen to be the friends of the informant, who claim to have accompanied the informant to the house of the appellants on 1.3.2001, PW 7 is the informant's mother while PW 8 is the elder brother of the deceased. Significantly, the Investigating Officer has not been examined. Post-mortem examination on the dead body of the deceased could not be conducted, since the dead body was cremated prior to the lodging of the FIR. In addition to the oral evidences, the prosecution had also adduced a letter (Exhibit-1), purported to have been written, by the deceased about 5 years prior to her death to her brother, namely, the informant, wherein, she had claimed to have suffered ill-treatment and torture at the hands of her husband and in-laws.

8. The appellants in their defence, examined three witnesses, out of whom, two were the doctors who had attended the deceased, while she was alive.

9. Considering the evidence, oral and documentary adduced by the prosecution and the defence, the trial Court recorded a finding that the evidences do not make out a case for conviction of the appellants for the offences u/s 302 of the IPC. However, relying upon the letter (Exhibit-1), claimed to be written by the deceased to her brother (informant) in the year 1996 and drawing inference, that the deceased used. to be tortured and subjected to cruelty by her husband and in-laws, the trial Court drew a further inference that the deceased was prompted to commit suicide on account of her ill-treatment by the appellants and hence the appellants were guilty for the offence u/s 306 of the IPC.

10. In the basis of the same letter and the oral testimony of the informant, the trial Court recorded its finding that the appellants were guilty for the offence u/s 498-A of the IPC. Likewise, on the basis of the above inferences, the trial Court recorded its finding that the abetment of the appellants, which prompted the deceased to commit suicide, was hatched out by and between them by way of a conspiracy and that the appellants had destroyed the evidence of the offence by hastily cremating the dead body.

11. From the perusal of the impugned judgment, it appears that the trial Court has though held the appellants not guilty for the offence of murder of the deceased but, relying upon the testimony of the informant, and the informant's brother and also a letter (Exhibit-1), purportedly written by the deceased during her lifetime to the informant, has drawn its inference that the death of the deceased was unnatural and that she had committed suicide on account of the abetment of the accused persons. The contention of the learned Counsel for the appellants that the inference drawn and the findings recorded by the trial Court are totally misconceived and that the trial Court has not applied its judicial mind to the evidences on record, appears to be correct and can be amply demonstrated.

12. As noted above, the witnesses, examined by the prosecution constitute two different sets. The first set of witnesses are the members of the matrimonial family of the deceased, the second set comprises of the informant and the members of his family.

13. The consistent case of the appellants is that the deceased was suffering from acute appendicitis and on the preceding night of her death, she had developed acute abdominal pain. She was promptly taken by her husband to the local doctor, who had attended her and after giving her first aid treatment, he referred the patient to the Hospital. Thereafter the patient was taken to the local Hospital where the patient was attended to by another doctor who had examined her and referred her to the Sadar Hospital at Daltonganj. These facts have been proved in evidence by both the doctors, namely, DW 1 and DW 2, who had attended the patient on the night of 26/27.2.2001. The fact that the deceased had developed acute abdominal pain on the night preceding her death, is confirmed by PW 1, who is the sister-in-law (gotani) of the deceased, by PW 2, who is the own cousin of the deceased, by the PW 3, who is the husband of the PW 2 and above all by

PW 4, who happens to be minor son of the deceased. Each of them has categorically stated that on the night preceding her death, she had developed acute abdominal pain and her husband had promptly taken her to the Hospital in the night itself. The witnesses have also affirmed that While on the way to the Sadar Hospital at Daltonganj, the deceased had died and she was declared brought dead by the doctor, at the Hospital.

14. Information regarding the death of the deceased was promptly conveyed to the parents of the deceased. The informant confirms that the telephonic message was received at his house by his wife at 8 a.m. in the morning of 27.2.2001. Despite such information, neither the informant nor any other member of his family proceeded immediately to the matrimonial house of the deceased. Rather, the informant went on the next day i.e. on 28.2.2001 to his parental house at Ranchi to inform his parents and thereafter on the day after, he went to the matrimonial house of the deceased.

15. The evidence of PWs 1, 2 and 3 and even that of PW 4 who is the minor son of the deceased, cannot be brushed aside merely on the ground that they happen to be the members of the family of the accused persons. Their evidences find corroboration from the independent evidence of the doctors, namely, DW 1 and DW 2 and also from the evidence of DW 3, who happens to be the proprietor of the Telephone booth, from where the youngest son of the appellant No. 1 made a telephonic call to the informant's house and conveyed the information regarding the death of the deceased. These evidences clearly suggest that the death of the deceased was on account of her own ailment and was a natural death. There is no indication from the evidences of any of the witnesses including the second set, that the deceased had committed suicide and her death was unnatural. The evidence of PW 2 who happens to be the cousin of the deceased assumes significance, since it cannot be expected that she would conceal the truth in order to save the accused persons. From the evidence of the informant and the members of his family who constitute the second set of witnesses, the inferences which could at best be drawn is that five years prior to the death of the deceased, she had complained to her brother, namely, the informant that she was being ill-treated by her husband and in-laws. The letter (Exhibit-1) purported to have written by the deceased does not confirm that the ill-treatment or torture was on account of any demand for dowry. No other evidence has been brought by the informant or any other witness from his side that since after the date of the last letter written by the deceased five years ago, the deceased had any occasion to make any grievance against her husband or in-laws or that she was ill-treated and subject to cruelty or torture by her in-laws prior to her death. The inference based upon the letter (Exhibit 1) as drawn by the trial Court that the accused persons had subjected the deceased to ill-treatment and cruelty for want of dowry, is totally misconceived and likewise, the inference that the deceased had committed suicide on account of the ill-treatment of the accused persons is also misconceived and without any firm basis.

16. It is also the admitted case of the prosecution, that despite receiving a prompt message in the morning of 27.2.2001, regarding the death of the deceased, neither the informant nor any member of the family had visited the matrimonial house of the deceased promptly and their visit was made two day's later i.e. on 29.2.2001. In view of the preceding fact that the deceased was suffering from acute appendicitis on account of which she had died and considering the fact that despite prompt information about her death, conveyed to the members of her paternal house, no one from their side had arrived, there was no occasion for the accused persons to treat the death of the deceased as unnatural or to delay the cremation of the dead body for days together awaiting the arrival of the parents and other relatives of the deceased.

17. The finding of the trial Court that the accused persons had hastily cremated the dead body is also against the weight of evidence on record and is totally misconceived.

18. For the reasons discussed above, I find merit in this appeal. The conviction and sentence of the appellants for the offences under Sections 306, 498-A, 120-B and 201 of the IPC and the sentence as imposed against them by the trial Court by the impugned order is hereby set aside. The appellants are acquitted from the charges. The appellant Nos. 1 and 3, namely. Brahamdeo Prasad Gupta and Leowanti Devi, who are on bail are absolved from the liability of their respective bail bonds. The appellant No. 2, Sunil Prasad Gupta is directed to be released forthwith from custody, if not wanted in connection with any other case.