

(2008) 06 OHC CK 0017
In the Orissa High Court
Case No : Criminal Appeal No. 17 of 2002

Charia Patra and Bhakta Patra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 302, 304, 304B, 304B(2), 34

Citation : (2008) 2 OLR 194 Supp

Hon'ble Judges : R.N. Biswal, J; P.K. Tripathy, J

Bench : Division Bench

Advocate : A.S. Nandi, for the Appellant; A.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Accused Chakra Patra and Charia Patra are respectively the father and mother of accused Bhakta Patra. Accused Prakash Patra is his younger brother. Accused Bhakta Patra is the husband of deceased Chiti @ Padmini Patra, who suffered death on 05.07.1998.

2. In S.T. Nos. 20-D of 1999 and 18-D of 2000, accused Bhakta Patra was charged for the offence u/s 302, I.P.C. whereas all the accused persons conjointly charged for the offences under Sections 498-A/34, I.P.C, Section 4 D.P. Act and Section 304B/34 I.P.C.

3. Prosecution case is that, in "Baisakha" 1997 accused Bhakta Patra married to Chiti @ Padmini Patra. Accused Chakra Patra and Bhakta Patra had a demand of Rs. 8,000/- (eight thousand) cash towards dowry. Out of that, Rs. 4,000/- (four thousand) was paid on the marriage altar, besides a bicycle, radio, wrist watch and other household articles. Accused Bhakta with Chiti led a happy conjugal life for about four months. Within that period the balance dowry amount of rupees four thousand was not paid by P.W.1, the father of the deceased. As alleged, all the accused persons subjected the deceased Chiti to ill-treatment. On several

occasions she went to her parental house and again brought back to the matrimonial house. Owing to such ill-treatment and cruelty, two days before 05.07.1998 the deceased went to her parents house. Accused Bhakta went and apologized with assurance not to ill-treat the deceased again and brought her back to his house. On 05.07.1998 because of the assault on her, Chiti expired in the house of the accused persons. On getting information, P.W.1 went to the house of the accused persons saw the dead body of her daughter and lodged F.I.R., Ext.1 in Bhubana Police Station. P.W.8, the O.I.C. of Bhubana P.S. took up the investigation and on completion of the investigation, submitted chargesheet against all the accused persons for the offences already noted above. In course of investigation not only he visited the spot, prepared the spot-map, held inquest over the dead body and forwarded the dead body for post mortem examination, but also made seizure of the incriminating materials and arrested the accused persons.

4. In course of the trial, prosecution examined eight witnesses. Amongst them, P.Ws.1 and 4 are the father and mother of the deceased and P.W.3 is a cousin (brother) of the deceased. P.Ws.6, 7 and 8 were official witnesses respectively being the Executive Magistrate who was present at the time of inquest, the doctor who conducted post mortem examination and proved the Post mortem Report, Ext.5, and P.W.8, the Investigating Officer. P.Ws.2 and 5, the two co-villagers of the accused persons turned hostile to the prosecution and declined to have any knowledge about ill-treatment and cruelty or about the manner in which the deceased died. Prosecution declared them hostile and with the permission of the Court confronted the previous statement recorded u/s 161, Code of Criminal Procedure.

5. At the stage of framing of charge and recording evidence during the trial, all the accused persons took the plea of complete denial to the charges. However, at the stage of examination of the accused and recording of the statement u/s 313, Code of Criminal Procedure accused Bhakta admitted that he had demanded the dowry amount, there was ill-treatment and cruelty on the deceased because of because of non-payment of the dowry amount and the deceased died due to the assault by him. In his language, because he was annoyed with the deceased, therefore, notwithstanding intervention of others he assaulted the deceased by means of a yoke.

6. On appreciation of the evidence recorded during trial and the statement of accused Bhakta, the Trial Court came to the conclusion that offence u/s 498-A/34, I.P.C. is made out against all the four accused persons. Accordingly he convicted each of the accused persons to undergo rigorous imprisonment for six months. He also found accused Chakra and Bhakta guilty of the offence u/s 4, D.P. Act and sentenced each of them to undergo rigorous imprisonment for six months. He found accused Bhakta alone being guilty of the offence of dowry death, punishable u/s 304-B, I.P.C. and the charge of murder, punishable u/s 302, I.P.C. Accordingly, he inflicted the punishment of imprisonment for life to

accused Bhakta without awarding separate sentence for the offence u/s 304-B of the I.P.C.

7. As stated at the Bar, accused Chakra and Prakash did not prefer any appeal as against the order of conviction and sentence awarded against them. This appeal was filed and being pursued by accused Charia and Bhakta.

8. Learned Counsel for the accused-Appellants argued that evidence of P.Ws.1, 3 and 4 should not have been relied on in furtherance of conviction of accused Charia. He further argued that statement of the accused in course of the examination u/s 313, Code of Criminal Procedure was not properly appreciated, in as much as accused Bhakta has not stated about assault leading to death on account of nonpayment of dowry but because of annoyance that might have cropped up due to family quarrel. Accordingly he argued to acquit accused-Appellant Charia and to modify the conviction of accused Bhakta for the offence punishable under second part of Section 304, I.P.C. and to acquit him from the offence u/s 304-B, I.P.C. Learned Standing Counsel on the other hand argued that evidence of P.Ws. 1, 3 and 4 could not be discarded, in as much as, close relatives like them would not protect the real killer of their daughter with a view to protect the actual assailant. He further argued that when accused Bhakta has admitted that he demanded dowry and subjected the deceased to ill-treatment and cruelty ail-throughout due to non-payment of the balance amount of dowry, there cannot be any other reason for the admitted assault on the deceased and therefore the conviction of the accused Bhakta should appropriately be under Sections 302 and 304-B, I.P.C.

9. For the sake of convenience, we take up the case of the accused-Appellant Charia Patra, the mother-in-law of the deceased. She has been acquitted of the charge u/s 4, D.P. Act and 304B/34, I.P.C. and has been convicted only for the offence u/s 498-A/34, I.P.C. As noted earlier, evidence of P.Ws.1, 3 and 4 has been tendered to substantiate that charge. In their evidence given in the same manner, none of the aforesaid three witnesses has made any specific averment about the manner of ill-treatment and cruelty made by accused Charia Patra. Each of the aforesaid witnesses has made omnibus statement that accused persons committed ill-treatment and cruelty on account of non-payment of dowry. On the basis of the same evidence when this accused has been acquitted of the other charges, on the selfsame evidence her conviction cannot be maintained for the offence u/s 498-A/34, I.P.C. Her case stands in a different footing than the case of the co-accused Bhakta, in as much as the latter has made statement admitting his guilt. In other words, in the absence of any clear and clinching evidence, conviction of accused Charia Patra u/s 498-A, I.P.C. is set aside and accordingly she is acquitted of the said charge.

10. In their evidence as noted above, P.Ws.1, 3 and 4 have stated that there was demand of dowry and it was paid in part at the marriage altar and for non-payment of the remaining dowry amount accused persons ill-treated and assaulted Chiti and. because of that, time and again she came to her parents

house to take shelter and it is accused Bhakta Patra who came and took her back and last such instance was two days before 05.07.1998. This part of the prosecution evidence has been admitted by accused Bhakta in his statement u/s 313, Code of Criminal Procedure. Apart from that, there is no cross-examination worth the name to discredit the aforesaid version of P.Ws.1, 3 and 4 on account of demand of dowry by accused Bhakta and his father and ill-treatment and cruelty to the deceased by accused Bhakta. Under such circumstance, P.Ws.1, 3 and 4 do not lose credibility on the ground that they are close relatives of the deceased. Apart from that, such relationship of the witnesses with the deceased does not ipso facto render their evidence non-acceptable. Thus, argument of Appellants to reject their evidence is without any merit.

11. Accused Bhakta in his statement u/s 313, Code of Criminal Procedure also admitted to the prosecution evidence that he had gone to bring back the deceased with assurance not to ill-treat or torture her any further, and notwithstanding that he ill-treated and tortured the deceased and ultimately on 05.07.1998 inflicted injuries and caused her death.

12. Evidence of P.Ws.1 and 3 is that on getting information about the assault on the deceased, they came to the occurrence village and to the house of the accused persons and found the deceased lying dead. In other words, deceased died in the matrimonial home while in custody of her husband accused Bhakta. This part of the occurrence was also substantially confronted to the accused Bhakta during his examination u/s 313, Code of Criminal Procedure and he admitted that part of the prosecution allegation.

13. Dr. Nilakantha Parida, P.W.7, deposed that on 06.07.1998 he along with Dr. B. Nayak conducted the post mortem examination on the dead body of the deceased and found the following injuries:

EXTERNAL INJURIES:

3.(1) Pinkish coloured stinch extends from mandibular region up to root of breast in front and whole of back up to pelvic gluteal region.

(2) Bruise on right side parietal region of scalp size 4" x 4" above mastoid region.

(3) Bruise over occiput size 2" x 2".

(4) Bruise over back of neck on hair-line size 3" x 2" horizontally placed.

On dissection:

(1) On dissection of external injury No. 2 black coloured haematoma epidural in nature below scalp skin was found.

(2) On dissection of external injury No. 3 black coloured blood epidural in nature below the haematoma was found.

(3) On dissection of external injury No. 4 black coloured haematoma below the bruise was found.

(4) On dissection of brain-cranial bone and membrane was found to be intact. There was a haematoma of size 4" x 3" in subarachnoid space, black in nature on the right side of hemisphere corresponding to the right parietal region.

He opined that all the injuries were ante mortem in nature, cause of death was due to subarachnoid haemorrhage and shock, and the injuries could have been caused by hard and blunt weapon. He fixed the time of death within 36 hours from the time of the post mortem examination. Virtually the aforesaid evidence of P.W.7 remained unchallenged in course of the short cross-examination.

14. There is no dispute between the parties to the evidence of P.Ws.1, 3 and 4 that accused Bhakta married to the deceased in the month of "Baisakha" 1997 and she died on 05.07.1998 due to the assault. Therefore, the deceased suffered homicidal death within 14 to 15 months of her marriage and that too while she was in the custody of her husband with the history of demand of dowry, partial payment of dowry at the time of marriage, non-payment of the balance amount of dowry, and torture meted to her on account of that. All the aforesaid proved facts and available circumstances irresistibly prove the offence of dowry death punishable u/s 304-B, I.P.C. Learned Sessions Judge, indeed, has convicted him for that offence in addition to conviction for the offence u/s 302, I.P.C. But, on a close scrutiny of the evidence on record, it is seen that in the absence of eyewitness to the occurrence, time of incident of assault is not known (though the occurrence took place on 05.07.1998). According to P.W.1, after the assault on the deceased, one Hazari @ Haguru Patra (not examined) came and informed him (P.W.1) at about 8 a.m. The distance of the occurrence village from the police station is 18 kilometers and the F.I.R. was lodged at 2.30 p.m. Therefore, all such facts if read together, then also the time gap between the assault and death of the deceased remains undisclosed. In his evidence, P.W. 7 has not stated if the injuries found on the dead body of the deceased were sufficient in ordinary course of nature to cause death. He has also not opined whether the death could have been instantaneous or otherwise. While convicting accused Bhakta for the offence u/s 302, I.P.C., learned Sessions Judge did not take note of absence of the aforesaid circumstances emerging from the evidence on record. Thus, under the given facts and circumstances, conviction u/s 302, I.P.C. was unwarranted and accused Bhakta is to be granted the benefit of doubt and to be acquitted from the charge of murder punishable u/s 302, I.P.C. At the same time that does not absolve him (Bhakta) from punishment on the death of his wife in view of the proved fact constituting the offence u/s 304-B, I.P.C.

15. Argument of the accused-Appellant Bhakta for conviction u/s 304, I.P.C. was with a view to minimise the punishment from life imprisonment. In that respect Section 304-B may also grant some respite to the accused, in as much as Section 304-B(2) provides that, "whoever commits dowry death, shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

16. Regard being had to the entire facts and circumstances involved in the case

and the conduct of the accused Bhakta in cooperating with the prosecution in course of the trial, we take a liberal view in sentencing him though the offence is heinous and unpardonable.

17. Thus, while setting aside the order of conviction of the Appellant Charia Patra u/s 498-A, I.P.C. and conviction of accused Bhakta Patra u/s 302, I.P.C, conviction of accused Bhakta Patra for the offence u/s 304-B and 498-A/34, I.P.C. is maintained. So far as the offence u/s 304-B, I.P.C. is concerned, accused Bhakta Patra is sentenced to undergo rigorous imprisonment for a period of ten years.

The Criminal Appeal is accordingly allowed in part.

R.N. Biswal, J.

18. I agree.