

(2013) 09 PAT CK 0056

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 393 of 2011

Dr. Dilip Kumar Sinha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Evidence Act, 1872 — Section 113B

Penal Code, 1860 (IPC) — Section 120B, 304B, 498A

Citation : (2014) 2 Crimes 169

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Pankaj Kumar Sinha in Cr. app SJ No. 393 of 2011 and Mr. Prabhat Ranjan Singh in Cr. app SJ No. 448 of 2011, for the Appellant; S.N. Prasad, Assistant Public Prosecutor in Cr. App (SJ) No. 393 of 2011 and Mr. Smt. Abha Singh, Assistant Public Prosecutor in Cr. App (SJ) No. 448 of 2011, for the Respondent

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Both the appeals arising out of one and same judgment. They have been heard together and being disposed of by this common judgment. The solitary appellant Dr. Dilip Kumar Sinha in Cr. Appeal No. 393 of 2011, stood charged only for the offence under sections 120B I.P.C. whereas, appellant Nos. 1, 3, 4 and 5, namely, Lal Mohan Rabidas, Gopal Rabidas, Bedamiya Devi and Bimli Devi in Cr. Appeal No. 448 of 2011, for the offence under sections 304B and 120B I.P.C. and appellant No. 2 Hira Rabidas for the offence under sections 304B and 498A I.P.C. but the trial court, i.e., 4th Additional Sessions Judge, F.T.C. Jamui vide judgment dated 23rd March, 2011 in Sessions Trial No. 686 of 2001 arising out of Lakshmipur (Gidhaur) P.S. Case No. 124 of 2000 convicted, both sets of the appellants for the offence under sections 304B, 120B and 498A I.P.C. and accordingly sentenced them to undergo R.I. for seven years for the offence under sections 304B read with section 120B I.P.C. and further sentenced all the appellants of Cr. Appeal No. 448/2011, for three years under sections 498A read

with section 120B I.P.C. and they are also ordered to pay fine of Rs. 1,000/- each, in default to undergo R.I. for six months, giving rise to the present appeals.

2. Prosecution case is based on the statement of Basanti Devi, P.W. 7, recorded by S.P. Singh, S.I. Gidhaur P.S. on 11.10.2000 at 04 hours in presence of her son Tuntun Rabidas, P.W. 5, Niru Manjhi, P.W. 8 and Lato (not examined) is that her daughter deceased Suchita Devi was married in her childhood with appellant Lal Mohan Rabidas and re-marriage (Gauna) was performed just five to six years before and she was aged about 25 years. Soon after remarriage she was being brutally treated by her husband and in-laws for petty demands causing her to reside mostly at Maike. Roughly twenty days before she was brought by her husband on the assurance of good behavior. Just a day before the Informant in the evening at five on 10th October, 2000 learnt from one Shalik Rabidas, P.W. 6 about the deceased being injured and being provided concealed treatment by a doctor where she along with others arrived and found the treatment was going on by the appellant Dr. Dilip Kumar Sinha, but inspite of her request and attempt she was not permitting to even see her injured daughter though her in-laws and others were there. Some time thereafter the treating doctor (appellant) left the patient with intimation to shift her and immediately thereafter the Informant and others could visit the injured and found her dead. Further allegation is that her husband and in-laws in want of dowry demands caused her burn injuries by Kerosene oil and in league with doctor getting her treated there where she could die.

3. The police after institution of the case and completion of investigation submitted charge sheet and after completing other legal requirements trial commenced wherein prosecution examined altogether nine witnesses besides producing the following documentary evidence:

Ext. 1-Signature of witness Tuntun Rabidas on Fardbeyan.

Ext. 1/A-Signature of Lato Manjhi on Fardbeyan

Ext. 1/B-Signature of Niru Manjhi on Fardbeyan

Ext. 2-Formal F.I.R.

Ext. 3-Endorsement and forwarding by the Officer Incharge.

Ext. 4-Inquest Report.

Ext. 5-Postmortem Report.

(Exts. 2 to 5 are not mentioned in the exhibit list, but the document bears endorsement and signature of P.O. and also finds corroborating from the evidence of P.W. 9 and order sheet of the court below dated 18.09.2010.

4. In defence altogether eight witnesses have been produced but no documentary evidence. The trial court on consideration of the materials convicted and sentenced the appellants in the manner aforesaid.

5. It is contended by learned counsel representing the appellants in Cr. Appeal No. 448 of 2011 that there is absolutely no material against the appellants, even marriage of the deceased was performed much more than seven years. There was no demand and it was an accidental burn injuries caused to the deceased due to her own negligence as is established by the prosecution witnesses itself, inspite of that appellant No. 1 Lal Mohan Rabidas, unfortunate husband, has already served the punishment awarded since continued in custody right from the date of his arrest and it is contended by learned counsel representing appellant Dr. Dilip Kumar Sinha that he has falsely been implicated on mere suspicion inspite of due treatment if the deceased could not survive there is no fault on the part of the appellant. However, he has also suffered substantial detention for about 8-1/2 months. The learned Additional P.P. hesitantly tried to support the findings of the court below on the ground mentioned in the judgment of the court below.

6. Out of nine prosecution witnesses, P.W. 1 Kisun Rabidas, P.W. 2 Naresh Rabidas, P.W. 3 Shyam Rabidas and P.W. 4 Dhaneshwar Rabidas are co-villagers of the in-laws of deceased and they had come to say about accidental burn injuries sustained by the deceased who herself disclosed to them about her getting under fire due to DIVRI while she was crossing the door and caught fire in the wearing Terylene Sari (Highly inflammable). She was brought for treatment immediately by her husband and in-laws, who during attempt to save her also sustained some injuries. None of these witnesses have ever been declared hostile. Thus prosecution rely upon their such statements.

7. P.W. 6 Shalik Rabidas is the person on whose information the Informant would come to know about the injuries sustained by her daughter and treatment being provided, has also stated same story and one of the attesting witness to the fardbeyan P.W. 8 Niru Manjhi since not supporting the prosecution version even least declared hostile, whereas, P.W. 9 Krishnandan Rabidas is formal witness proved Exts. 2 to 5.

8. Now only two witnesses, namely, P.W. 5 Tuntun Rabidas and P.W. 7 Basanti Devi respectively brother and mother of the deceased remains. P.W. 5 has his own business in Calcutta and he is aged about 24 years at the time of examination, i.e. five years after the occurrence. This itself indicates that he was aged six years younger than the deceased comes to say about demand of dowry without any specific details and ill treatment being provided to the deceased by the in-laws etc. and further on getting information from P.W. 6 along with his mother P.W. 7 arrived at the place of doctor where treatment was being provided and they were not permitting to go in and subsequently doctor left the place followed by other in-laws and they found her dead. Thereafter statement of her mother was recorded by police and he proved Exts. 1, 1/A and 1/B. In very initial cross examination in para-9 he says his sister was married in his very childhood roughly 20 to 25 years ago and at that time he was at very tender age and he has visited her Sasural only one or two times. It itself bring doubt on marriage

beyond ambit of section 304B I.P.C. In para-13 he says that the deceased was residing there for the last five to six years. Further in para-16 he has raised doubt against the doctor where deceased was brought for treatment. In paras-22 and 23 of the cross-examination he states about husband of the deceased used to prepare and sale slippers initially at Calcutta subsequently at Patna and the deceased was engaged in Bididi business.

9. P.W. 7 Basanti Devi, Informant and mother of the deceased has tried to support prosecution version in examination-in-chief with a variation that marriage and re-marriage (Gauna) both were performed simultaneously and this statement further confirms in well first question in para-3 of the cross-examination whereas she further adds that marriage was performed at the age of 18 years which is contrary to her own case and statement of her son P.W. 5. She also has not said anything about demand and period etc.

10. From the statement of the prosecution witnesses it is evident that they are inconsistent with the period of marriage and demand of dowry etc. Their testimony is not at all sufficient to attract presumption as available u/s 304B I.P.C. along with section 113B of Evidence Act which reads as such:-

304-B. Dowry death:-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

113-B. Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

11. And as stated earlier P.WS. 1 to 4 and 6 have stated un-reverting the testimony that it was an accidental burn injuries caused to the deceased by her own negligence, without any otherwise role played by her in-laws etc.

12. In face of above defence evidence are not required to be examined or need any consideration as rightly submitted by Bar. Having regard to the facts and circumstances stated above, conviction and sentence of the appellants cannot be permitted under law to sustain and therefore set aside and both the appeals are allowed and the appellants are set free from the liabilities of their bail bonds.