

(1997) 06 OHC CK 0015

In the Orissa High Court

Case No : Criminal Appeal No's. 123 of 1994 and 62 and 63 of 1997

Gati Behera and Another, Purusottam Sahu and Another and
Dambarudhar Pradhan and Others APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 19-06-1997

Acts Referred:

Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 304B

Citation : (1997) 2 OLR 62

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.K. Mund, D.P. Das and J.K. Panda, for the Appellant; Addl.
Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P. K. Misra, J.—The appellants in Criminal Appeal No. 123 of 1994 have been convicted u/s 304B, Indian Penal Code (hereinafter referred to as the "I.P.C.") and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- each, in default, to undergo rigorous imprisonment for six months. Both of them are further convicted u/s 498A, I.P.C., and sentenced to undergo rigorous imprisonment for one year; u/s 201, I.P.C., and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for six months; and u/s 4 of the Dowry Prohibition Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- each, in default, to undergo rigorous imprisonment for six months. All the substantive sentences have been directed to run concurrently.

The appellants in the other two appeals have been convicted u/s 201, I.P.C., and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for six months. The

appellants in the latter two appeals had filed appeals before the Sessions Judge, Sambalpur. Since those appeals arise out of the very same judgment, the records were called for and have been re-numbered in this Court. All the three criminal appeals are being disposed of by one common judgment.

2. The appellants in Criminal Appeal No. 123 of 1994 are respectively the father-in-law and mother-in-law of deceased Jyotsna who married their son, P.W.4., in June, 1990. P.W.18, the eldest brother of the deceased, had paid a cash of Rs. 1,000/- to accused Gati towards travelling expenses, but according to accused Gati the same was inadequate. He had also promised to pay a further cash of Rs. 2,000/- after solemnisation of the marriage. Deceased Jyotsna came to the house of accused Gati, but he and his wife were not satisfied with the property brought by the deceased and were always quarrelling with her, and the deceased was being harassed. After some days, the deceased could not tolerate the ill-treatment and went away to the house of her father. P.W.4 went to bring her back and on being persuaded by P.W.18, the deceased came to the house of accused Gati with her younger sister (P.W.6) and younger brother (P.W.7). The deceased was kicked and abused by her mother-in-law, accused Padma, as the balance amount had not been brought. Few days after, her brother and sister went back to their house. On 16.2.1992, the brother-in-law of the deceased (sister's husband) received information that the deceased was seriously ill and he deputed his son, the informant, who reached the house of accused Gati at about 7 A.M. and found that her aunt (the deceased) was lying dead in her bedroom and preparation was being made for cremation of the dead body. In spite of his advice not to cremate the dead body, the other appellants took away the dead body and cremated it even before any information could be lodged before the police. Subsequently, the informant went to Deogarh Police Station and lodged F.I.R. at about 9.30 A.M. indicating that he suspected foul play. After completion of the investigation, charge-sheet was submitted against father-in-law and mother-in-law of the deceased under Sections 304B and 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act and u/s 201, I.P.C. against all the eight accused persons including the father-in-law and mother-in-law of the deceased.

3. The plea of the accused persons was one of denial.

4. The trial Court found that there was demand for dowry and as the balance amount had not been paid, the deceased was being tortured and harassed by her father-in-law and mother-in-law. The trial Court also found that there was nothing, on record to indicate that the death was under natural circumstances and since the death had occurred within seven years of marriage, presumption of belief u/s 304B, I.P.C, was available against both the accused father-in-law and mother-in-law of the deceased. Accordingly, the father-in-law and mother-in-law were convicted under Sections 304B and 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act and as the dead body had been cremated by the other accused persons in spite of objection of the informant, all the accused persons were convicted u/s 201, I.P.C.

5. Though the evidence relating to demand of dowry and harassment of the deceased on account of non-payment of balance amount is slightly discrepant here and there, I do not find any reason to differ from the findings recorded by the trial Court. The criticism of the learned counsel for the appellants that interested evidence given by the relations of the deceased relating to demand of dowry and harassment should be discarded, is not acceptable because ordinarily such evidence can be led only by the relations of the deceased. It is true that sometimes evidence relating to harassment and torture can also be given through the mouths of neighbours and co-villagers. In the present case, merely because there is no other witness. I am not in a position to discard the testimony of the relations of the deceased regarding physical assault on the deceased. The findings of the trial Court on this score are based on cogent discussion of evidence and it is unnecessary to recount, in detail, the reasonings given by the trial Court. Accordingly, I confirm the findings regarding the culpability of the two appellants in Criminal Appeal No. 123 of 1994 u/s 498A, I.P.C., and u/s 4 of the Dowry Prohibition Act.

6. So far as the conviction of the aforesaid two appellants u/s 304B, I.P.C., is concerned, the trial Court has mainly relied upon the presumption available u/s 113B of the Evidence Act. To attract culpability u/s 304B, it must be found that the death of the woman is caused by any burns or bodily injury or under abnormal circumstances. In the present case, there is no dispute that death has occurred within seven years of the marriage. It is also apparent that the deceased had been subjected to cruelty or harassment by the relatives of her husband in connection with demand for dowry. The important question to be considered is whether the death was caused by any burns or bodily injury or under abnormal circumstances. In this connection, the trial Court has raised the presumption u/s 113B of the Evidence Act. Section 113B reads as follows:

"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.

Explanation : For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).

Before raising a presumption u/s 113B, a Court is required to come to a conclusion that soon before her death, the deceased had been subjected to cruelty or harassment for, or in connection with, any demand for dowry. If the Court comes to such a conclusion, then it shall presume that the person who had subjected the deceased to such cruelty or harassment has caused the dowry death. In other words, the Court shall presume that the death of the woman has occurred otherwise than under normal circumstances. However, even though the Court is bound to raise such a presumption, as per Section 4 of the Evidence Act, such a presumption is rebuttable one and can be disproved. In the present case,

there is specific evidence of P.W.4 that the death of his wife was on account of diarrhoea. The trial Court did not place any reliance upon the evidence of P.W.4 on the ground that P.W.4 must have stated so to save his parents. I do not think, it was open to the trial Court to reject the specific evidence of a prosecution witness who had not been declared hostile by the prosecution, merely because the effect of such evidence was in support of some of the accused persons. It is not that such a statement was elicited from P.W.4 by way of cross-examination in some unguarded moment. In fact, such a statement was made in examination-in-chief. P.W.4. stated :

".....On next Friday at 4 P.M. Jyotsna suffered from diarrhoea and in the night at about 2 A.M. she expired"

Trial Court discarded such statement on the ground that the evidence of P.W.4 that she was not treated before her death improbabilises the alleged illness. In rural areas non-treatment of ailing persons is not uncommon. Though the statement of P.W.4 was made in examination-in-chief, no attempt had been made by the prosecution to cross-examine P.W.4 on the point. In fact, to clarify my doubt as to whether it was an inadvertent omission on the part of the prosecution, I had gone through the relevant statement of P.W.4 before the police. P.W.4 in his statement before the police had also stated that his wife suffered from diarrhoea and died. The categorical statement of a prosecution witness who being the husband of the deceased had special means of knowledge regarding the cause of death of his wife, could not have been disbelieved merely because the parents of such witness were the accused persons. In such view of the matter, it must be held that the death of Jyotsna was not unnatural and the presumption, if any, u/s 113B had been disproved. In the absence of any proof that death of Jyotsna was not under normal circumstances, the question of convicting the father-in-law and mother-in-law of deceased Jyotsna u/s 304B, I.P.C. would not arise. Accordingly, their conviction u/s 304B, I.P.C., is liable to be set aside.

7. So far as the conviction of all the accused persons u/s 201, Indian Penal Code, is concerned, in view of the finding that death of Jyotsna was neither homicidal nor suicidal, the cremation of the dead body cannot amount to an offence u/s 201, inasmuch as the death itself was in normal circumstances. Besides, it is admitted by the prosecution that the two appellants in Criminal Appeal No. 123/94 had not gone with the dead body for cremation. There is no material on record to indicate that at their instance the dead body was cremated. So far as other accused persons are concerned, there is nothing on record to indicate that they were aware that any offence had been committed. It is not uncommon in villages that the villagers come forward and take active steps in cremating a dead person. In the absence of any positive material to show that the other accused persons were aware of any offence having been committed, their act in cremating the dead body cannot amount to an offence u/s 201, I.P.C.

8. In the result Criminal Appeals 62/97 and 63/97 are allowed and the appellants

therein are acquitted of the charge u/s 201, I.P.C. Criminal Appeal No. 123 of 1994 is allowed in part. The appellants therein are acquitted of the charges u/s 304B and 201, I.P.C., but their conviction and sentence under Sections 498A, I.P.C., and Section 4 of the Dowry Prohibition Act are sustained.