

(2009) 09 OHC CK 0009

In the Orissa High Court

Case No : Criminal Appeal No. 221 of 1999

Gouranga Behera (since dead) and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2, 4

Penal Code, 1860 (IPC) — Section 302, 304B, 334, 34, 498A

Citation : (2010) CLT 49 (Suppl CrI)

Hon'ble Judges : S.C. Parija, J;A.S. Naidu, J

Bench : Division Bench

Advocate : D. Panda, for the Appellant; J.P. Patra, Addl.Standing Counsel, for the Respondent

Judgement

A.S. Naidu, J.—The three Appellants filed this Criminal Appeal assailing the common judgment and order of conviction passed in S.T. Case No. 4/55 of 1996 and ST. Case No. 33/239 of 1996 by learned 1st Addl.Sessions Judge, Puri convicting all of them under Sections 498-A, 304-B/34, IPC read with Section 4 of the D.P. Act and sentencing them to undergo R.I. for life for the offence u/s 304-B, IPC, R.I. for three years for the offence u/s 498-A/334, IPC and R.I. for two years for the offence u/s 4 of the D.P. Act. The sentences were directed to run concurrently. In the meanwhile, it appears that Appellant No. 1-Gouranga Behera and Appellant No. 3-Nishamani Behera have expired. This appeal is confined only to Appellant No. 2-Fakir " Hari " Alok Behera.

2. The prosecution was set to motion on the basis of an F.I.R. lodged on 7.2.1994 by P.W.10 at Puri Town Police Station. According to the informant, his daughter Sabita was given in marriage for Fakir " Hari " Alok Behera according to Hindu rites and customs. Before marriage, it is alleged, demand was made by the parents of Hari for a scooter and Rs.10, 000/- in cash. After negotiation, however, it was decided that P.W.10, the father of the victim will pay a sum of Rs.25, 000/- as dowry, which was paid by him on the next date. After the

marriage. Sabita and Hari led a happy conjugal life for some time. Thereafter, dissension arose and Sabita returned to her parent's house and requested her father, the informant, to give her a sum of Rs.10, 000/- as she was being abused and scolded by her in-laws. The informant kept his daughter with him for some days intending to make arrangement for the money. It is alleged that two days thereafter, Appellant Nos.2 and 3 came and forcibly took away Sabita to their house. On the date of incident, the informant received information that Sabita was killed. He rushed to the house of Sabita and found that she was lying dead with burn injuries on her person. It was further alleged that Sabita was tortured for dowry and was put to death since the demand could not be met by the informant. After receipt of the F.I.R. (Ext.1), a P.S. case was registered, which was subsequently converted to G.R. Cases No. 171 of 1995 and the O.I.C. took up investigation arrested the accused persons, conducted inquest, sent the dead body for post mortem, seized the incriminating materials and after completion of investigation, submitted charge-sheet in the "Court of learned S.D.J.M., Puri. It appears that learned SDJM after going through the records, took cognizance of the offences against the accused Gouranga and Hari and committed their case to the Court of Session and S.T. Case No. 4/55 of 1996 was registered. Thereafter, by a separate order, cognizance was taken against accused Nishamani in split up G.R. Case No. 171-A of 1995 and the said case was also committed to the Court of Session in S.T. Case No. 33/239 of 1996. As both the appeals arose out of the same incident, they were heard together and were disposed of by learned 1st Additional Sessions Judge by a common judgment.

3. The prosecution in order to substantiate the charges, got examined 14 witnesses. Out of them, P.W.1 is the mother of the deceased Sabita. According to her, Sabita was given in marriage according to Hindu rites and customs on 7th March, 1994. Initially there was demand for a scooter and a cash of Rs.10, 000/-, but then after negotiation, the in-laws of Sabita agreed for a cash of Rs.25, 000/- and gold ornaments apart from other house-hold articles like T.V. and other utensils. After the marriage, her daughter Sabita led a blissful married life for about 8-10 months and thereafter, ill-treatment started by the in-laws. He further stated that very often she used to complain about the torture on her for non-payment of demand. She returned to her house and told her parents that she was abused and tortured and requested them to pay a sum of Rs.10, 000/-, but then on the same night the husband of Sabita came and took her away forcibly to his house. On the date of occurrence, she was informed by a lady of the vicinity that Sabita was burnt. On hearing the news, she (P.W.1) rushed to the house of Sabita and found that the Sabita was lying on the floor with flames of fire and also found kerosene oil was flowing on the floor. P.W1 specifically stated that 10 months prior to the occurrence, she had seen accused Nishamani, mother-in-law of Sabita proceeding towards the house of her daughter. P.W.2 is a lady from the neighbourhood. According to her, she want to collect water from the tap and hearing the commotion from the house of Sabita, she went there and found Sabita lying on the floor and her two legs were burning. She also found a

stone beside her, but stated that the same was in tact. P.W.3 is Anr. neighbour, but then he did not support the prosecution case and was declared hostile. P.W.4 is the brother-in-law of the accused Hari. He also did not support the case of the prosecution and was declared hostile. P.W.5 is a neighbour. According to him, 4-5 days before the death of Sabita, accused Hari had requested him to persuade the parents of Sabita to allow their daughter to return and when he asked the father of Sabita, he told that as there was demand of dowry, he was trying to arrange money. P.W.6 is also a neighbour. On the date of occurrence at about 12.30 P.M. she noticed smoke coming out of the house of the accused persons and raised a hullah. Consequently other persons of the neighbourhood assembled on the back door to the house of accused persons and found Sabita lying on the floor with burn injuries. P.W.7 is Anr. neighbour, who heard hullah and went to the house of the accused. He brought water and poured the same on her. According to him, he found Sabita lying on the floor with burn injuries and by then she was dead. P.W.8 spoke about the marriage and demand of dowry. P.W.9 is the elder brother of the father of Sabita. He also spoke about demand of dowry. P.W.10 is the informant and father of the deceased. P.W.11 is a witness to the dead body chalan, P.W.12 is the I.O. and P.W.13 is the doctor, who conducted autopsy of the deceased. P.W.14 is the I.O who submitted charge-sheet. Perusal of the entire evidence further reveals that the house of the informant and the house of the accused persons are in the same vicinity and in fact, separated by Anr. house in other words, they were virtually neighbours to each other.

4. Learned 1st Addl. Sessions Judge, Puri after discussing the evidence both oral and documentary threadbare, came to the conclusion that death of Sabita was homicidal in nature. She had also sustained certain anti mortem injuries. There was not only demand of dowry, but also dowry was received. There was also evidence with regard to torture for non-payment of dowry. Accordingly to learned Addl. Sessions Judge, there was ample evidence to reveal that Sabita was subjected to cruelty and harassment and was assaulted by her husband and in? laws for demand of dowry before her death and her death was otherwise than under normal circumstances. Basing on such conclusion, he held all the accused persons guilty of the offence under Sections 304-B/334, 498-A, IPC and Section 4 of the D.P. Act, but he found them not guilty u/s 302/34, IPC and sentenced them thereunder.

5. Mr. B. Panda, learned Counsel appearing for the Appellants strenuously took this Court once again through the entire evidence and submitted that the prosecution evidence was neither cogent nor consistent. He further stated that the Court below has erred in law in convicting the Appellants basing upon the evidence, which was not reliable. It is stated that learned Addl. Sessions Judge completely misread the evidence of the doctor, P.W.13 and the conclusions arrived at are based more on surmises and conjectures than on cogent evidence. According to Mr. Panda, the evidence of the prosecution witnesses with regard to demand of dowry before marriage being not consistent and as material discrepancies are very much apparent, learned 1st Addl. Sessions Judge should

not have relied upon the same. It is further submitted that there is no evidence with regard to demand of Rs. 10, 000/- toward dowry. On the other hand, reading of the entire evidence would reveal that Sabita asked her father, the informant, to pay a sum of Rs.10, 000/- so that a latrine can be constructed in the house of her in-laws. It is stated that Sabita was facing difficulties to go to her neighbour's house for easing herself and wanted that a latrine should be constructed in their own house. For the said purpose, she went to the house of her father, which was separated by only one house and requested them to pay the amount. Thus, it is submitted that none of the ingredients having been established and as the case u/s 304-B, IPC is not made out, the order of conviction is otherwise unjust and illegal and should not be sustained. Similarly, it is stated that as the death occurred due to an accident, the conviction u/s 304-B, IPC was also not warranted.

6. All these submissions are repudiated by Mr. J.P. Patra, learned Addl. Standing Counsel appearing for the State. According to him, learned 1 st Addl. Sessions Judge has vividly discussed the evidence and the conclusions arrived at are not only just and proper, but also in consonance with the oral and documentary evidence and as such, the order of conviction needs no interference.

7. We have heard learned Counsel for the parties at length. We have also meticulously gone through the evidence both oral and documentary. In the case in hand, the accused persons faced trial for commission of offence under Sections 498-A, 304-B, 302/34, IPC and Section 4 of the D.P. Act. Section 498-A of the IPC deals with cruelty meted out to a married woman by her husband or relatives of her husband. The said Section defines "cruelty" as (a) and willful conduct, which is of such nature as is likely to drive a women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or harassment; (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Thus, the most important ingredient, which is necessary to establish the charge u/s 498-A, IPC is willfully subjecting a woman to cruelty. It is further necessary that the degree or intensity of such cruelty on the part of the accused is to such an extent that it is likely to drive the woman to cause grave injury or danger to her life.

8. Similarly, dowry death has been defined u/s 304-B, IPC, which reads as follows :

304B. 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 for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purpose of this Sub-Section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) 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.

9. The Supreme Court in the case of Smt Shanti and Another Vs. State of Haryana, laid down the ingredients of Section 304-B, IPC and observed that the following are the essentials to constitute an offence for the said Section.

(i) The death of a woman should be caused by burn or bodily injury or otherwise than under normal circumstances.

(ii) Such death should have occurred within seven years of marriage. (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband. (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

10. Apart from the aforesaid Anr. ingredient for the said Section to come into play is that cruelty or harassment was meted out "soon before her death". Thus, to convict a person u/s 304-B, IPC, there must be materials to reveal that "soon before her death" the victim was subjected to cruelty or harassment. In the case in hand, evidence of the doctor, P.W.3 clearly reveals that anti-mortem injuries were found on the person of the deceased. The evidence of the witnesses including that of the father and mother and neighbours reveals that Sabita on being abused and tortured for demand of Rs. 10, 000/- as dowry, went to her parent's house. On the same night her husband and in-laws brought her back, but on the very, next day, she breathed her last after sustaining anti-mortem injuries and burn injuries. Thus, the basic ingredients of Section 304-B, IPC are satisfied. Learned Addl. Sessions Judge has dealt with the evidence in extenso. After going through the reasons assigned we do not find any infirmity. Even otherwise, we have also gone through the evidence both oral and documentary and we find that the requirements of Section 304-B, IPC are satisfied.

11. In view of the discussions made above, we are not inclined to interfere with the order of conviction issued by the learned Addl. Sessions Judge.

12. However, it appears, out of the three Appellants, Appellant Nos.1 and 3 have already died and Appellant No. 2-Hari " Alok Behera is already in custody for about thirteen years. Considering the said fact, we convert the sentence imposed to the period already undergone by him. He be released forthwith if his detention is not required in connection with any other case.

S.C. Parija, J.

13. I agree.