
(2011) 08 PAT CK 0082

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 136 of 1997

Indrajeet Upadhya @ Chiku Upadhaya

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 3, 304B, 307, 32, 324

Citation : (2011) 08 PAT CK 0082

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the Appellant and learned Counsel for the State.

2. The Appellant has been convicted for offence u/s 304B and sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case as alleged in the Fardbeyan of the informant that when she was at her Naihar on 16. 11. 1994, at 7 P.M. her husband Indrajeet Upadhya @ Cheeku Upadhya came and stated to transfer the land in the name of her husband on which she refused then her husband sprinkled kerosene oil and setting fire by matches by which she start burning, but anyhow she managed to set off fire from her samij and salwar and then changed her dress and went to the house to her neighbour, namely, Darshan Mistry. It is further stated that her husband flee away after setting on fire and her Sasural adjacent to her Naihar and her mother-in-law was also there and she was instrumental in getting her husband flee away. Her marriage was solemnised in the same year 1994 and her father had given Rs. 50,000/- in cash. It is further alleged four days prior to the occurrence, her husband was pressing her neck for non-fulfillment of demand of dowry and her mother-in-law has also tried to break her marriage.

4. The said Fardbeyan said to have been recorded by A.S.I. Manmohan Prasad,

Officer-in-Charge Rajgir P.S. at 23 hours on 16.11.1994 at Referfal Hospital, Rajgir and forwarded the Fardbeyan to O.C., Silau. The Police instituted the case under Sections 324, 307/34 of Indian Penal Code and 3/4 of Dowry Prohibition Act and S.I. Deobachan Choubey ordered to investigate the case.

5. On the Fardbeyan, F.I.R. was lodged. However, during investigation victim died, so post mortem conducted on 01.03.1995 and Section 304B was added by order dated 02. 03. 1995. The post mortem report indicates that burn injuries over whole of the neck, chest, abdomen and back and death was stated to be occurred due to burn injury. After investigation, charge sheet submitted. Cognizance taken and case was committed to the Court of Sessions. Charge framed.

6. During trial, ten witnesses were examined on behalf of the prosecution apart from documentary evidence. However, the Trial Court convicted the Appellant u/s 304B solely on the basis Fardbeyan of the informant of Ext. 2 recorded by A.S.I. treating it as dying declaration but acquitted Mamta Devi and Deepu Upadhya. Other witnesses in this case except Doctor and I.O. has been declared hostile and not supported the prosecution case.

7. Learned Counsel for the Appellant however, assail the judgment of conviction and sentence solely on the ground that the P.W. 7 has, though, proved the Fardbeyan but has admitted that he has not mentioned the physical condition of the deceased when the doctor has opined that victim was unconscious and never regain the consciousness.

8. Learned Counsel for the State however contends that Fardbeyan has been recorded by the Officer-in-Charge and Fardbeyan can be relied upon and No. corroboration is required for treating it as dying declaration.

9. However, taking into consideration the evidence in the light of submission, out of ten witnesses, P.W. 1 to 5 who includes father and mother of victim and other material witnesses has turned hostile and none of the witnesses have come forward to support the prosecution case of setting fire or about subjecting cruelty or demand of dowry. Hence only evidence remained in Fardbeyan which has been recorded by the Officer-in-Charge of Rajgir P.S.P.W. 7 and P.W. 6 proved his signature on Fardbeyan but stated that Daroga took his signature on plain paper and P.W. 8 is doctor depose that victim had burn injury and was not in condition to speak out.

10. Hence the case is solely based on dying declaration of the victim recorded in Fardbeyan. It is pertinent to mention that Section 32 of the Evidence Act provides for admission of dying declaration. The principle well settled by the Apex Court that the juristic theory of acceptability of dying declaration is that a man will not meet his maker with lie in his mouth. However the Court has bounden duty to see that statement of deceased was not as a result of either tutoring or prompting on product of imagination. The Court must be satisfied that deceased was in a fit and conscious state of mind to make a declaration and had

the opportunity to observe and identify the assault what is essential that the person who record dying declaration must be satisfied that deceased was in a fit state of mind.

11. Here under the facts and circumstances of the case P.W. 7 a Police Officer posted as O/C Rajgir P.S. proved the Fardbeyan of deceased lady marked as Ext. 2 and admitted that he has not mentioned the physical condition of the victim Kundan Devi. The doctor, P.W. 8 has stated in his evidence that victim was not in a condition to speak and her condition was serious and hence on the basis of these evidence, it is not possible to infer that victim was in a fit state of mind and gave her statement voluntarily. Hence the fact that at the time of making dying declaration the victim was in a fit state of mind is not established.

12. Hence there is No. evidence that the statement recorded by the P.W. 7 was a voluntary statement of the victim in her fit state of mind and was not manipulated and the prosecution has not been able to prove the charges beyond reasonable doubt.

13. Hence order of conviction and sentence recorded by the lower court is hereby set aside and the appeal is allowed.