
(2007) 01 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 42597 of 2005

Indu Devi and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 323, 325, 498A

Citation : (2007) 2 PLJR 112

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Prabhat Kumar Singh and Sunita Soni, for the Appellant; Gopesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Both the cases arise out of the same Guthani police station case No. 40 of 2003, which is now pending in Fast Track Court no.4, Siwan bearing Sessions Trial No. 383 of 2004. The petitioner, Ritesh Kumar has challenged the order of cognizance dated 23.9.2004 passed by the Chief Judicial Magistrate, Siwan thereby and thereunder he has taken cognizance u/s 304B of the Indian Penal Code against the petitioner. The petitioners of another Cr. Misc. No. 42597 of 2005 have challenged the order dated 18.10.2005 passed by the Fast Track Court No.4 thereby and thereunder he has rejected the petitioner for discharge and ordered for framing of charge u/s 304B of the Indian Penal Code. Petitioner, Ritesh Kumar, is the husband of the deceased lady, Rubi Devi whereas other petitioners are her in-laws. Opposite Party no. 2, who is father of the deceased lady, lodged Fardbeyan on 20.10.2003 before Guthani police station arraying all the three petitioners as accused upon which the police registered case against the petitioners under Sections 323, 325 and 498A of the Indian Penal Code as well as u/s 3/4 of Dowry Prohibition Act.

2. According to the prosecution story the daughter of the informant was married with the petitioner, Ritesh Kumar on 29.1.2001. After marriage the victim went to her Sasural where a daughter was also born to her. Thereafter all the petitioners began to torture her for demand of TV, Motorcycle, Fridge etc. Her leg was fractured by them for non-fulfillment of demand. On information the informant went to her Sasural and inquired about the incident. Ultimately he brought his daughter to his house for treatment. It has been alleged that later on the informant requested the petitioners to take her back but in spite of requests they did not take her back.

3. It appears that in course of treatment the victim lady died on 20.2.2004. Thereafter the case was converted into a case u/s 304B of the Indian Penal Code. The police after investigation submitted charge-sheet only against her husband Ritesh Kumar and final against other two petitioners showing them as innocent. However, the learned Chief Judicial Magistrate took cognizance vide order dated 23.9.2004. In course of trial the petitioners of Cr. Misc. No. 42597/05 filed a petition u/s 227 of the Code of Criminal Procedure for discharge but the same was rejected by Fast Track Court no. 4 vide order dated 18.10.2005.

4. Submission of learned counsel for the petitioners is that the entire case is false and baseless. They never made any demand of dowry nor the victim was ever assaulted by them. The real fact is that after birth of a child the informant took away his daughter to his house where her leg was fractured due to slip. On receipt of the information the husband Ritesh Kumar rushed to her and brought her to Deowaria for treatment from Dr. R.C. Gupta. As she did not improve she was brought to Veranashi for treatment from the imminent doctor, Dr. Marwa. Later on she was treated at Patna by Dr. R.C. Ram where it was detected that actually she was suffering from Bone Cancer and fracture was pathological fracture, as a result of ailment. She was also treated by the imminent doctors like Dr. Mukhopadhyay and others of Patna. Ultimately she was shifted to Tata Memorial Institute, Mumbai. Ill-luck she was not recovered and the doctor of Mumbai returned her and the informant brought her to his house and thereafter he began to bargain with the petitioners and on failure to get anything a false case was lodged by the informant with false allegations. Ultimately she died in her parents house, as a result of bone cancer. In support of the above contention the petitioners have filed a large number of documents including medical certificate (annexure-2) prescriptions and papers of different doctors of the hospitals including that of Tata Memorial Institute, Mumbai.

5. It is further submitted that there is complete absence of ingredients of dowry death as defined u/s 304B of the Indian Penal Code. The victim died a natural death, as a result of incurable disease, namely, cancer and not as a result of burn or any bodily injury or otherwise than under normal circumstances. Therefore, the prosecution of the petitioners u/s 304B of the Indian Penal Code is out and out misuse of process of court. This case has been filed just to harass the petitioners and to take undue advantage and not to secure their conviction.

6. Section 304B of the Indian Penal Code runs as follows;

304B, Dowry Death.--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."

7. The most important ingredient of dowry death is that the death of woman must be as a result of burn or bodily injury or otherwise than under normal circumstances. According to the prosecution the victim died as a result of fracture of leg alleged to be caused by the petitioners but the documents i.e. medical reports and certificates filed by the petitioners clearly go to show that it was a case of pathological fracture and not due to any external injury. "Pathological fracture" is a fracture which is caused by disease and not due to any injury. In the instant case it was actually caused due to bone cancer.

8. It is further submitted that the victim died after two years of the alleged incident at parents house due to bone cancer and not due to bodily injury or otherwise than under normal circumstances. Thus, it is a case of natural death due to illness and not a case of dowry death. Therefore, Section 304B of the Indian Penal Code is not at all attracted in this case and hence prosecution of the petitioners is out and out misuse of process of the court. There is not at all chance of conviction u/s 304B of the Indian Penal Code on the basis of such allegation and materials.

9. There is another circumstance to show falsity of the allegation. The documents clearly go to show that the petitioners took every steps to save the life of the victim. They spent a lot of money in treatment at different places including at Mumbai. There is no lapse on the part of the petitioners in the treatment of the victim. Thus, having regard to the facts and circumstances of the case, prosecution of the petitioners u/s 304B of the Indian Penal Code is out and out misuse of process of court. Accordingly, both the Criminal Miscellaneous applications are hereby allowed and the impugned orders as well as entire criminal proceeding in question is quashed.