

(2009) 07 OHC CK 0091

In the Orissa High Court

Case No : Criminal Appeal No. 23 of 2000

Jagannath Rana and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 302, 304, 304B, 307, 313

Citation : (2010) CLT 153 (Suppl CrI) : (2010) 1 OLR 259 Supp : (2010) OLR 153 (Suppl CrI)

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

Bench : Division Bench

Advocate : B.K. Nayak, for the Appellant; Soubhagya Ketan Nayak, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The order of conviction and sentence dated 23rd December, 1999 passed by learned Addl. Sessions Judge, Rayagada convicting the Appellants for commission of offence u/s 498-A read with Section 302, IPC and sentencing them to undergo R.I. for three years for the offence u/s 498-A, IPC and further sentencing each of them to undergo R.I. for life for commission of offence u/s 302, IPC and directing both the sentences to run concurrently in S.C. No. 11 of 1997, is assailed in this criminal appeal.

2. According to the prosecution, Kanaka Kumari BaidyaBhusan alias Sanjukta was the younger sister of the informant, Lalit Kumar Baidya Bhusan (P.W.1). She was given in marriage to the accused Jagannath Rana, a peon in Commercial Tax Office, Rayagada about six months prior to the occurrence. At the time of marriage, a cash of Rs.50, 000/-, one Bajaj M-80 Motor Cycle, gold and silver ornaments and other house-hold articles were given towards dowry. Two months after the marriage, Sanjukta complained that her husband, accused Jagannath, brother-in-law accused-Krushna Chandra Rana and mother-in-law accused Smt.

Kuntala Rana were demanding more dowry and were subjecting her to mental and physical torture. The informant during his visit to Rayagada, day before Kumar Purnima was told by his sister Sanjukta about the physical and mental torture inflicted upon her on account of dowry. She was threatened by all the accused persons and warned that if she would fail to fulfill their demands, she would be killed. Three days after his return, the informant once again went to Rayagada being called by the accused Krushna. He found that his sister was crying and was wearing an old torn saree. On enquiry the informant came to know from his sister that she was driven out from her house after being beaten mercilessly by her husband, mother-in-law and brother-in-law and only on the intervention of the inhabitants of the colony, she was allowed to remain in the house. It was alleged that she was beaten on the public road with a demand to bring more dowry. The informant convinced all the accused persons and assured them that their demands will be fulfilled and returned to Rayagada. On 7.11.1995 at about 8.00 P.M. all the accused persons pinned Sanjukta on the floor, poured kerosene on her and set her on fire, consequently, she sustained grievous burn injuries throughout her body. She ran out of the house almost without any clothes. At last on being persuaded by their neighbours, she was shifted by the accused persons to the District Headquarters Hospital, Rayagada for treatment. The doctor intimated about the incident to I.I.C., Rayagada Police Station vide Ext.11. Basing on the same, the I.I.C. made a station diary entry and directed A.S.I., Siba Charan Das (P.W.16) to meet the treating physician P.W.10, collect the injury report and also directed the S.I., Susanta Kumar Biswal (P.W.21) to proceed to the District Headquarters Hospital, Rayagada to cause an enquiry about the burn injuries. In course of treatment as the condition of Sanjukta became serious, she was shifted to Christian Hospital, Bisamcuttack. In the meanwhile, the informant, P.W.1 who was at Gunupur on receiving a message about the serious condition of his sister, proceeded to Bisamcuttack. On arriving there, he found that his sister, has got burn injuries over her body and after ascertaining the details about the incident, lodged a written F.I.R., Ext. 2 before the O.I.C., Bisamcuttack Police Station on 8.11.1995. However, as the place of occurrence was under the jurisdiction of Rayagada Police Station, the O.I.C., Bisamcuttack sent the same to LLC, Rayagada Police Station. Treating the same to be a formal F.I.R., P.S. Case was registered under Sections 498-A, 307/34, IPC read with Section 4 of the D.P. Act against all the three accused persons and P.W.21 took up investigation. He issued requisition to the Tahasildar-cum-Executive Magistrate, Bisamcuttack to record the dying declaration of the patient as her condition was serious. In consonance with the said requisition, P.W.20, the Executive Magistrate, Bisamcuttack recorded the dying declaration of Sanjukta vide Ext.3. In course of investigation, P.W.21 visited the spot at Rayagada, seized some incriminating materials such as kerosene plastic jerrican, match-box etc. Unfortunately however, Sanjukta succumbed to the injuries on 11.11.1995 at 2.30 A.M. After receiving information, P.W.21 proceeded to the hospital at Bisamcuttack, held inquest over the dead-body, prepared inquest report and sent the dead body of the deceased to Medical Officer, C.H.C.,

Bisamcuttack for post-mortem examination. In course of investigation P.W. 21 was transferred and he handed over the charge of investigation to R.K. Mallick, S.I. of Police, who completed the same and submitted charge-sheet against all the accused persons for commission of offence u/s 498-A, 302, 304-B/34, IPC read with Section 4 of the D.P. Act in the Court of learned S.D.J.M., Rayagada in G.R. Case No. 395 of 1995. After perusal of the police records and on being satisfied that prima facie case is made out, learned SDJM took cognizance of the offence and committed the case for trial to the Court of Session.

3. The plea of defence was of complete denied. They examined two witnesses in support of their plea. From the suggestion made in the process of cross-examination and from the statements made u/s 313., it appears that the accused persons took a plea that before marriage and prior to the date of occurrence, Sanjukta was of unsound mind and committed suicide by pouring kerosene on her body and setting herself to fire. According to the defence story on the date of occurrence, accused Jagannath was sleeping in one room and accused Kuntala and Krushna were sleeping in Anr. room of the quarter allotted to them. Sanjukta due to imbalance of mind poured kerosene on their body and set fire on her body. On hearing the shout of Sanjukta, accused Jagannath, in order to extinguish fire, poured water on her body and the other two accused persons also rushed to the spot and covered the body of Sanjukta in an attempt to extinguish fire. Thereafter, covering the body with a saree, all the accused persons shifted her in a rickshaw to the District Headquarters Hospital, Rayagada. In short, the plea of the defence is that they are innocent and are no way involved in the crime in question and they have been falsely implicated in the case by P.W.1.

4. In order to establish their case, the prosecution got examined 21 witnesses. Out of them, the informant P.W.1 is the brother of the deceased, P.W.20 is the Executive Magistrate, Bisamcuttack, who recorded the dying declaration on 10.11.1995, Ext.3 on police requisition. P.W.10 is the Medical Officer of Rayagada Hospital, who admitted the injured Sanjukta as it was a medico legal case, intimated the matter to police vide Ext. 10. P.W. 19 is the Medical Officer of Christian Hospital, who treated the inured Sanjukta and in whose presence the Executive Magistrate recorded the dying declaration, P.Ws.9 and 17 are the doctors, who jointly conducted autopsy, P.W.21 is the S.I. of Police who initially took up investigation of the case, P.Ws. 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, and 14 are independent witnesses. Learned Addl.Sessions Judge after vivid discussion of the evidence both oral and documentary and basing upon the dying declaration as well as evidence of the neighbours came to the conclusion that the prosecution had successfully proved its case beyond all reasonable doubt against the accused persons and accordingly found them guilty under Sections 498-A/302, IPC and convicted them thereunder.

5. The aforesaid finding is assailed mainly on the ground that there being no eye witness to the occurrence, the conclusions arrived at by the learned Addl.

Sessions Judge were not just and proper. In course of hearing, learned Counsel for the Appellant also criticized the dying declaration as well as the evidence of the witnesses, who were neighbours, mainly on the ground that there are several omissions and contradictions between the facts narrated and submitted that it is a fit case where the order of conviction should be set aside.

6. On the other hand, learned Counsel for the State meticulously placed before us the important oral evidence of witnesses as well as the dying declaration and submitted that the evidence of neighbours coupled with the dying declaration fully established the case against all the accused persons and there is absolutely no ambiguity in the evidence. According to him, learned Addl. Sessions Judge has discussed the evidence very meticulously and the conclusions arrived at the are cogent and based on the evidence available on record. As such, the order of conviction need no interference.

7. To appreciate the inter se arguments, we once again went through the evidence meticulously and considered the submissions made before us diligently. P.W.1 is the brother of the deceased. He has clearly deposed with regard to the physical and mental torture which his sister was subjected to by the accused persons. A reading of the entire evidence clearly gives an impression that the accused persons were not satisfied with the articles given at the time of marriage and demanded more dowry and prevailed upon Sanjukta to bring some more dowry from her parents. It also appears that she was beaten and even threatened with dire consequences if she would fail to fulfill the demands. Though P.W.1 was cross-examined at length, nothing could be elicited from him to disprove his statement. It is true that some of the neighbours do not support the prosecution case with regard to torture and have been declared hostile. But then, P.W.4 Parbati Panigrahi, who is also a resident of the colony has deposed before the Court that often disturbances took place in the family of the deceased on account of dowry and that the accused persons were demanding additional dowry from the bride and her parents. She further deposed that she has noticed Sanjukta being tortured in close rooms by Jagannath, who was in the habit of drinking liquor. P.W.6 is Anr. witness, who throws sufficient light on the occurrence. According to her on 7.11.1995 at about 11 P.M. she was standing outside the house with her husband and heard the voice of Sanjukta and found her crying for help. She was shouting to save her from burning and by that time she was already in flames. The said witness further deposed that Sanjukta came out of her house and was running in naked condition and rushed into the house of her neighbour one Rao Babu. According to P.W.6, while Sanjukta went to the house of Rao Babu, by that time both the male accused persons arrived there and threatened to kill her. They also threatened Ors. not to interfere with their family affairs and forcibly took Sanjukta to their house. On being persuaded, they carried her in a rickshaw from their house to the hospital. P.W.8 is Anr. witness, who saw Sanjukta wearing only a blouse only came running with strip of flames on 7.11.1995. He also saw Sanjukta entering into the house of Mr. Rao. This witness has corroborated the statement made by P.Ws.6 and 11 and further

stated to that accused Jagannath picked up his shoe and attempted to assault Sanjukta. He has also deposed that Sanjukta told before them that the accused persons set her ablaze by pouring kerosene on her. The medical evidence corroborates the injuries sustained by the deceased. The dying declaration was recorded by the Executive Magistrate on police requisition. At the time of recording her dying declaration, the doctor was also present by the side of the patient to assist the recording. In the dying declaration, Sanjukta stated that her husband and relatives of her husband, i.e., mother-in-law and brother-in-law poured kerosene and set fire on her body. The said dying declaration, Ext.3 was not only signed by the Executive Magistrate, but also by the doctor (P.W.19). In his evidence, P.W.19 also reiterated the statement made by Sanjukta in his presence. P.W.20 is the Executive Magistrate, who recorded the dying declaration. In his deposition, he has stated that "She told to me that her husband, mother-in-law and husband's brother poured kerosene on her and set fire to her body. The thumb impression of the patient could not be taken as her both the fingers were burnt. She was able to give answer at the time of recording dying declaration. At the time of recording dying declaration, the Doctor gave opinion that she was able to speak."

8. The aforesaid discussions leads to an irresistible conclusion that the accused persons and the accused persons alone had committed the ghastly and heinous crime of setting Sanjukta on fire with the common intention to kill her. Learned Addl. Sessions Judge has vividly discussed the evidence and the conclusions arrived at are just and proper. We are, therefore, not inclined to interfere with the said finding and the conclusions arrived at by the learned Addl. Sessions Judge.

9. In the present day's scenario, one of the most despicable, detestable and condemnable evils that has been distressing our Indian culture and civilization, is dowry in cash and kind demanded by the groom and his family members. Dowry is a vice which has not even spared the rich, cultured and educated masses. Even the urban elite torture their wives for dowry. Dowry is a disease which has eaten away the moral values on which our society thrived. Though legislation tried its best to eradicate the menace, yet its tentacle is so firm that nothing much can be done. The case in hand is one of such barbaric crime said to have been committed by the husband and in-law's of the bride.

10. Out of the three accused persons, Appellant No. 3 is the mother-in-law of the deceased. She is an old lady of about 65 years now and has remained in custody for about 13 years. Even otherwise, a cumulative reading of the entire evidence do not reveal any specific overt-act said to have been committed by her. Considering the said facts and her fragile health condition, sex and age as well as the offence alleged to have been committed by her, we feel that it would be just and proper if the order of conviction is modified to one u/s 304, Part-II, IPC instead of Section 302, IPC. Accordingly, the order of conviction of Appellant No. 3, Kuntali Rana is modified to one u/s 304, Part-II, IPC and she is sentenced to

the period already undergone. She be released forthwith, if her detention is not required in any other case. The order of conviction and sentence so far as Appellant nos.1 and 2 are concerned, stand confirmed.

11. The appeal is allowed in part.

S.C. Parija, J.

12. I agree.