
(2012) 04 CHH CK 0025
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 2644 of 2000

Jhutel Ram Kaushik and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 304B, 34

Citation : (2012) 2 CG.L.R.W. 438 : (2012) 3 Crimes 449

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Alok Bakshi and Mr. Vivek Sharma, for the Appellant; Vaibhav Goverdhan for the State, for the Respondent

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.—The present appeal arises out of the judgment and order dated 16.10.2000 passed by Additional Sessions Judge, Khairagarh in Sessions Trial No. 144 of 1998 convicting the accused/appellants under Sections 304B and 201 of IPC and sentencing each of them to undergo rigorous imprisonment for ten years u/s 304B of IPC and rigorous imprisonment for three years u/s 201 of IPC and pay fine of Rs. 3.000, in default of payment of fine to further undergo rigorous imprisonment for six months. Both the sentences were directed to run concurrently. Brief facts of the case are that deceased Santoshi Bai wife of appellant No. 2 Mukesh Kumar died on 18.7.1997 at about 9 a.m. and her body was cremated on the same day in between 3 to 4 p.m. On 18.7.1997 at 5 p.m. Merg intimation Ex. P1 was given by Ram Chandra (PW 1), grandfather of the deceased alleging in it that marriage of his granddaughter Santoshi Bai was solemnized with appellant No. 2 Mukesh about four years prior thereto and the couple was blessed with a female child. He has alleged that about 15 days prior to the date of incident the deceased had come to her house all alone and upon inquiry, she informed that as she had shown her desire to her in-laws to visit her parental house, she was not permitted for that and instead they picked up a

quarrel which made her leave the matrimonial home without informing anyone. He has further alleged that about eight days thereafter, father-in-law and mother-in-law of the deceased took her back on the pretext of performing some ritual. On the date of incident at about 2.30 p.m. Kunwar Kaushik (PW 3) hailing from the village of appellants informed him that deceased Santoshi Bai had expired and till he reached there, her dead body would not be cremated. It has been alleged that when he along with Bhagwat Kaushik (PW 8) reached village Koshmanda, the body of the deceased had already been cremated. He asked appellant No. 1 Jhutel Ram as to why the cremation was done without waiting for him and when he could not get any satisfactory answer, suspicion grew in his mind and information was given to the police. Based on the above Merg intimation Ex. P1, Dehati Nalishi Ex. P6 was recorded on the same day and FIR Ex. P7 was registered on 20.7.1997 against appellants 1 & 2 for the offence under Sections 304B, 201 and 34 of IPC. After completion of investigation, challan was filed on 8.9.1997 against the present appellants for the offence under Sections 304B, 201 and 34 of IPC.

2. So as to hold the accused/appellants guilty, prosecution has examined 13 witnesses in support of its case. Statement of the accused/appellants were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

3. After hearing the parties the trial Court has convicted and sentenced the accused/appellants for the offence under Sections 304B and 201 of IPC. Hence the present appeal.

4. It has been argued by the learned counsel appearing for the appellants that there is no allegation against the appellants for demand of dowry nor that of cruelty and in these circumstances they cannot be convicted for the offence u/s 304B of IPC. According to the counsel for the appellants, there is absolutely no evidence on record that the death of deceased was unnatural or within 7 years of her marriage. It has also been argued that no allegation whatsoever has been made against appellants 1, 3 & 4 yet they have been convicted.

5. On the of her hand supporting the impugned judgment it has been argued by Shri Goverdhan, learned counsel appearing for the State that conviction of the appellants is strictly in accordance with law and does not suffer from any infirmity.

6. Heard counsel for the parties and perused the material available on record including the judgment impugned.

7. Admittedly, there is no evidence on record as to the cause of death of the deceased because post-mortem of the deceased could not be performed as dead body was cremated before lodging of Merg and registration of Dehati Nalishi. Melan Ram (PW 12), driver of tempo has stated that when the deceased was being taken to Kawardha hospital for treatment, she was suffering from acute

diarrhoea and expired on the way.

8. Ram Chandra (PW 1), grandfather of the deceased and lodger of Merg intimation Ex. P1 in his court statement has stated that marriage of the deceased was solemnized with appellant No. 2 about four years prior to the date of incident and it is he who performed the said marriage because father of the deceased Parabhu (PW 5) was living separately with his wife Sati Bai (PW 6). After marriage, deceased used to visit his house and she was also having a female child. He has stated that once he had gone to the matrimonial house of deceased to bring her where in his presence the deceased was beaten by her husband, appellant No. 2 and he had intervened the same. Thereafter, deceased had come alongwith him and after staying there for about eight days she got back to her matrimonial house. According to this witness, whenever the deceased visited his house, she used to inform him that her husband, appellant No. 2 asked for recording his name on the property of this witness to which he had told her that as the property was a joint property and a case for the, same was already pending, the name of appellant No. 2 cannot be recorded. He has stated that one month prior to the incident when he was sick, the deceased had come to his house all alone and upon being asked she informed him that the appellants were not permitting her to come there and therefore she had come alone without their permission. On this, he told her that she should not have come without their permission. After about eight days appellant No. 1 i.e. father-in-law of the deceased came to his house along with two other persons to take back the deceased. He has further stated that he was informed by the deceased that as her daughter and this witness were sick, some worship was to be performed in the house of appellants therefore she was required to go there and accordingly she went to her matrimonial house. According to him, on the date of incident Kunwar Singh (PW 3) of village Kusmanda i.e. village of appellants came to his house and informed him about the death of deceased and also told that the appellants would wait for him to cremate the dead body. At about 3 p.m. he reached village Kusmanda and on seeing fumes in the cremation ground he went there but by that time dead body of the deceased had already been cremated. He asked appellant No. 1 as to why the body of the deceased was cremated without waiting for him on which he was informed that as he could not reach on time, the cremation was performed. He has stated that when he enquired about the death of the deceased, he was informed that she was being taken to Kawardha for treatment but on the way she expired. As he had suspicion in his mind, he lodged the report on the same day at about 5 p.m. He has further stated that marriage of the deceased was solemnized with appellant No. 2 about 6-7 years prior to the date of incident. In paragraph 15 of his cross-examination, he has admitted the fact that he never informed the police about the allegation which he made against appellant No. 2 seeking recording of his name on his property and he is disclosing this fact for the first time in the Court. He has further admitted the fact that while giving Merg intimation he had not named all the accused persons. In paragraph-19 of his cross-examination he has stated

that he reached village Kusmanda at about 4.30 p.m. where he was informed by appellant No. 1 that the deceased was suffering from diarrhoea and while being taken to hospital, she died on the way. There appear to be material contradictions and improvement in the Court statement of this witness from that of his case diary statement.

9. Ghanshyam (PW 2) is a witness of inquest notice Ex. P2 and inquest Ex. P3 by which Panchnama of the place where the body of the deceased was cremated was made. Kunwar Singh (PW 3) is a witness who had gone to the village of Ram Chandra (PW 1) about 11 a.m. to give information about the death of deceased. In cross-examination, this witness has stated that on the date of incident it was raining and normally in the village, cremation is performed as soon as possible and that at the time of funeral, 30-40 persons were present. Ramanuj (PW 4) in whose presence information about the death of deceased was given to Ram Chandra (PW 1) has stated that he had accompanied Ram Chandra (PW 1) to village Kusmanda where they reached at about 4.15 p.m. This witness has also admitted the fact that on the date of incident it was raining. Parabhu (PW 5), father of the deceased has not made any specific allegation against the appellants. Sati Bai (PW 6), step-mother of the deceased has stated that whenever the deceased visited the house of Ram Chandra (PW 1), she used to inform him and his wife about the appellants. There appear to be certain omissions in her statement because in paragraph-5 she has categorically stated that all the facts were informed to her by the deceased when she was taking the deceased to her matrimonial house and this fact was also informed to the police by her and if the same has not been recorded by the Police she cannot tell the reason. This witness has however admitted the fact that on the date of incident it was raining. Santosh Singh Rajput (PW 7), the Assistant Sub-inspector had recorded the Merg intimation Ex. P1. Bhagwat (PW 8) is a villager who alongwith other villagers accompanied Ram Chandra (PW 1) to village Kusmanda and upon being asked by Ram Chandra it was informed by appellant No. 1 that information was given at 11 a.m. but they did not reach in time, therefore, body of the deceased was cremated. Hiralal (PW 9) has not supported the prosecution case and has been declared hostile. Dhanush Tiwari (PW 10), the village doctor has stated that on the date of incident the deceased was suffering from diarrhoea and he was asked to treat her but as her condition was serious and she was very weak, instead of treating her, he advised the appellants to take her Kawardha for treatment. Gajendra Singh (PW 11) who had informed the incident to village Kotwar has not stated anything against the appellants. Melan Ram (PW 12), the Tempo driver has stated that on the date of incident appellant No. 2 called him up by saying that his wife was sick and was to be taken to Kawardha. He had taken the deceased, appellant No. 2, appellant No. 1 and his wife in his vehicle to Kawardha. He has further stated that he had to stop the vehicle on the way because the deceased was suffering from acute diarrhoea and that she died on the way. L.K. Panday (PW 13), the Investigating Officer has supported the prosecution case.

10. Minute examination of the evidence makes it clear that there is absolutely no allegation against appellants 1. 3 & 4 of making any demand of dowry. None of the witnesses has stated a single word against these persons and therefore their conviction by the trial Court is bad in the eye of law and the same is set aside.

11. So far as the allegation against appellant No. 2 is concerned, the only allegation against him is that he had asked the deceased to go and ask his grandfather Ram Chandra (PW 1) for recording his name in his property. Even Ram Chandra (PW 1) and other witnesses of the prosecution have failed to prove this allegation. There is no evidence on record to show that the death of the deceased was unnatural rather there is evidence that the deceased died due to acute diarrhoea and efforts were also made by the appellants to save her life. Further there is no evidence that soon before death, the deceased was subjected to cruelty or any demand of dowry was made by the appellants. Further, there is no evidence on record in relation to the offence u/s 201 of IPC. From the evidence adduced by the prosecution it is apparent that after death of the deceased, information was given to Ram Chandra (PW 1) and when he did not reach village Kusmanda in time, funeral of the deceased was performed. Record also shows that normally in villages funeral is performed before sun set and there is evidence that on the date of incident it was raining and therefore the funeral was performed before sun set. Thus, taking the entire evidence available on record into consideration, this Court finds it difficult to uphold the conviction of even appellant No. 2 for any offence. In view of the aforesaid discussion, this Court is of the considered opinion that the judgment impugned convicting and sentencing the accused/appellants as mentioned above is not in accordance with the evidence available on record and therefore the same is liable to be set aside. Accordingly the appeal is allowed. Impugned judgment dated 16.10.2000 is hereby set aside. Accused/appellants are acquitted of all the charges levelled against them. Since the appellants are already on bail, their bail bonds stand discharged.