
(2011) 08 JH CK 0026

In the Jharkhand High Court

Case No : Criminal Appeal D.B. No. 731 of 2003

Krishna Purty @ Kishun Purty

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 304(B), 307, 498(A)

Citation : (2011) 08 JH CK 0026

Hon'ble Judges : R.K. Merathia, J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Rajesh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.05.2003 and 28.05.2003 respectively, passed by learned Additional Sessions Judge, Fast Track Court No. 1, Chaibasa, in Sessions Trial No. 31 of 2000, convicting the Appellant u/s 302 Indian Penal Code and sentencing him to undergo R.I. for life and pay a fine of Rs. 4,000/- and in default R.I. for six months was imposed.

2. The prosecution case is based on the dying declaration of Jema Purty (deceased-wife of the Appellant). She gave the said statement in the ladies ward of hospital on 11.9.1999 at about 10 P.M. before Shakuntala Devi, the Sub Inspector of Police-, Sadar Thana (Court Witness-1), to the effect that the Appellant had two wives. The first wife was alive. The Appellant was working as a Peon in the Forest Department. He was not providing her expenses, for which there was quarrel between them in the morning on that day. The Appellant called the deceased in a bungalow of one Forest Officer (K.K. Chatterjee) where she reached at about 6 P.M. The officer was not present. In the veranda, where the Appellant used to live, he started quarreling with her again. The Appellant became furious and sprinkled kerosene oil on her body and lighted match, due to which she started burning. On her cry, P. Ws.-1 and 2 reached there and they

along with Appellant took the deceased for treatment in hospital.

3. The police registered a case u/s 498(A) and 307 Indian Penal Code. The deceased Jema Purty died after about four days i.e. on 14.1.1999 during treatment. The I.O. added Section 304(B) Indian Penal Code and the chargesheet was submitted u/s 304(B) Indian Penal Code, on which cognizance was taken. However, the trial court altered the charge u/s 302 Indian Penal Code after hearing the parties. Accordingly, charge was framed.

4. Learned Counsel for the Appellant submitted that the dying declaration is not reliable. If deceased had 90% burn injury she could not put her signature on her fardbeyan. He further submitted that no doctor has been examined in this case to prove that the deceased was in a position to make statement. He also submitted that even as per the prosecution case, the alleged occurrence took place during quarrel and in heat of passion and therefore at best the Appellant could be convicted u/s 304 Part I or Part II Indian Penal Code.

5. On the other hand, Mr. Verma, Learned Counsel for the State, supported the impugned judgement.

6. The defence was that the deceased was not his wife. She had independent source of income and therefore there was no question to call her at the alleged place of occurrence and that the FIR was lodged at belated stage and that the Appellant has been falsely implicated in this case.

7. The prosecution examined seven witnesses. P.W. 1-Pandey Ram Sardar, Forest Guard and P.W-2-Raghu Ho, Peon of the Forest Department are the persons named in the FIR. They supported the prosecution case to the effect that they reached at the place of occurrence on hearing the cry of the deceased. The Appellant was also present. The deceased was burning. These two P. Ws. including the Appellant, extinguished the fire by cloths. In the hospital, the police came and the deceased gave her statement in presence of these witnesses. Police also took the statement of these witnesses. Both these witnesses confirmed the statement made by the deceased before the police. It may be noted here that after the amendment of charge, when P.W. 2 was further cross-examined, he said that the deceased became senseless and she remained senseless at the time of admission in the hospital and that he was not in a position to say when she gained sense. However, such statement of P.W-2 is not fatal to the prosecution case in view of the other materials on record fully corroborating the statement of the deceased/dying declaration.

8. P.W-3-Phulmani Mundri is the Nurse of Sadar Hospital, Chaibasa. She specifically said that the deceased gave her statement before the police in her presence. She also confirmed the statement made by her and proved her signature and the signature of the deceased on the Fardbeyan. After amendment of charge, this witness was cross-examined. She specifically said that when deceased was brought to the hospital, she was conscious and she was speaking properly, and was not fumbling at the time of giving her statement before the

police, and this witness was also present.

9. P.W-4-Madhusudan Gagrai, Jeep Driver of Forest Department. In his jeep, the deceased was taken to hospital. He is also a witness to the seizure of an empty bottle smelling kerosene oil and burnt match stick.

10. P.W-5-Sukhram Munda is a Peon in the Forest Department and is a hearsay witness.

11. P.W-6-Dr. Lalit Minz is the Medical Officer, who conducted postmortem and found that the deceased aged about 30 years had about 90% deep thermal burn injuries involving the whole body. Signing of hair of axilla, pubic area, nostrills. The doctor did not find any other injury on the person of the deceased. He opined that the cause of death was due to excessive loss of blood and he further said that it is not true that patient died due to lack of treatment.

12. P.W-7-Sunil Bihari Saran is the Investigating Officer of the case. He supported the prosecution case. He inter alia said that he found black mark on the floor at the place of occurrence.

13. Shakuntala Singh, Assistant Sub Inspector of Police(Court Witness-I) inter alia said that she was sent for recording fardbeyan of the informant (deceased) as she was on duty at that time. She confirmed the statements made by the deceased before her. She also said that the deceased was in conscious state and she was able to understand questions and was speaking properly. This witness proved her signature on the fardbeyan. This witness also said that at the time of recording statement, the doctor was not available in the hospital and that she did not take any permission from doctor for recording fardbeyan and did not obtain about capability of the informant to make statement.

14. The submissions of Learned Counsel for the Appellant are not acceptable. It is amply clear that the deceased was capable of making statement and such statement has been fully proved and corroborated by the prosecution witnesses such as P. Ws, 1, 2, 3 and 7 and the Court witness-1. The I.O. has also found black mark on the floor at the place of occurrence and also a bottle with smell of kerosene oil and burnt match sticks at the place of occurrence. The seizure of these things have also been fully proved. It appears that there was dispute and quarrel between the Appellant and the deceased. She was called by the Appellant where he was living. She reached there at about 7 P.M. The officer was not present in the bungalow. It is true that there was altercation and the Appellant became angry but even in that situation, it was not expected that he will sprinkle kerosene oil and will put on fire upon the deceased. In such burning cases, the death occurs usually during treatment. The Doctor denied that the deceased died due to lack of proper treatment. C.W. 1 clearly said that the Doctor was not available in the hospital at the time of recording evidence. There is no reason for disbelieving the prosecution witnesses. This case does not fall u/s 304 Indian Penal Code.

15. After hearing the parties and going through the records carefully, we do not find any reason to interfere with the impugned judgment. Accordingly, it is confirmed. The appeal is dismissed.