

(2011) 04 PAT CK 0143

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 144 of 1994

Lilanand Mandal and Santosh Mandal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 302, 304B, 328, 498A

Citation : (2011) 04 PAT CK 0143

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Judgement

Anjana Prakash, J.—The Appellants are the father-in-law, brother-in-law (dewar and husband) of the deceased and convicted by a judgment dated 21.5.1994 passed by learned 5th Additional Sessions Judge, Purnea in Sessions Trial No. 128 of 1993 u/s 304-B and 498-A I.P.C. and sentenced to 10 years and 1 year rigorous imprisonment respectively as well as u/s 4 of the Dowry Prohibition Act and sentenced to rigorous imprisonment for 6 months.

2. The case of the prosecution according to P.W.4 Mahesh Mandal is that his daughter was married to the Appellant Kuldeep Mandal about 5 years ago and a dispute had arisen between P.W.7 and other in-laws of the Appellant over keeping of some jute in the house of P.W.7 Birendra Prasad Bishwas in course of which the Appellant Kuldeep Mandal attempted to assault P.W.7 but the deceased had intervened. On the fateful day, the nephew of the Appellant Kuldeep Mandal came and informed the informant that his daughter was precarious and when he reached the place of occurrence he learnt that she had been poisoned to death. A case u/s 302 and 328 I.P.C. was instituted and charges were also framed under the said sections in addition to Section 304-B I.P.C.

3. During trial P.W.4 the informant turned hostile and did not support the case of the prosecution, P.W. 2 was tendered whereas P.W.8 and 9 were formal witnesses, P.W.6 was hostile whereas P.W.1 is on the point that a panchaiti had

taken place between the Appellant and P.W.7, P.W.3,5,7 are the material witnesses who have been relied upon by the Trial Court, P.W.9 and 10 are the doctors who examined the deceased in an injured condition and performed post mortem examination respectively.

4. It has been submitted on behalf of the Appellants that as is apparent from the First Information Report there was no story that the deceased was tortured for ends of dowry and this story was developed, during investigation, so as to shift the onus on accused with regard to the death of the deceased. Further submission is that since it is a development made subsequently and the father of the deceased himself has not been supported the factum of demand of dowry the same should be rejected outright.

5. Next submission is that the ingredients of 304-B I.P.C. are completely absent in the facts of the case also because the doctor has not supported that there was any external injury on the person of the deceased and that the deceased had died on account of poison since there was no final report with regard to Viscera which was preserved. Under the circumstances, it was difficult to conclude positively that in fact it was a case of murder.

6. On going through the evidence and evaluation of the material witnesses and the doctor, I am unable able to conclude that there is any material which would warrant conviction of the Appellants u/s 304-B I.P.C. Since the father himself has not supported the factum of demand of dowry nor is there any conclusive proof of murder. The Appellants are thus acquitted and conviction and sentence of the Appellants passed by learned 5th Additional Sessions Judge, Purnea in Sessions Trial No. 128 of 1993 is hereby set aside and the Appellants are discharged from the liabilities of their bail bonds.