
(2005) 06 JH CK 0075

In the Jharkhand High Court

Case No : Criminal Appeal No. 452 of 2002

Madhusudan Rai @ Madhu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 113B

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

Citation : (2006) CriLJ 332 : (2006) 3 Crimes 332 : (2006) 1 JLJR 147 : (2005) 4 JCR 102 : (2005) 35 AllIndCaS 732 : (2005) AIR Jhar HCR 2381

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Afaque Eqbal, for the Appellant; Malti Chaurasia, APP, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—This appeal is directed against the judgment dated 18.6.2000, in Sessions Trial No. 601 of 2000, whereby the learned trial Court convicted the appellant for committing the offences under Sections 498-A and 304-B of the Indian Penal Code and sentenced him to undergo RI for a period of 2 years u/s 498-A and RI for a period of 7 years u/s 304 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2. The prosecution story, in short, is that the informant, namely. Shailesh Kumar Roy (PW 6) , the brother of the deceased Sandhya Roy lodged FIR on 18.5.1996, alleging therein, that his sister Sandhya Roy (deceased) was legally married to the appellant Madhusudan Roy @ Madhu on 18.5.1996 and thereafter his sister started living in the house of the appellant, Madhusudan Roy @ Madhu. The appellant started demanding Rs. 45,000/- (Rupees Forty Five thousand) from the informant and when he showed his inability, the appellant left his sister in his house. Then his sister did file a case for maintenance against her husband, but

the same was compromised," as the appellant gave assurance that he would keep his wife nicely and then he took her to his house, but he again started torturing and ill-treating her.

On 17.6.2000, the informant was informed on telephone that his sister has consumed something and thereafter she has been brought to Rajendra Medical College Hospital, Ranchi for treatment. On 18.6.2000 at about 2:35 PM, the informant went to the Rajendra Medical College Hospital, Ranchi and he saw his sister was being treated in the hospital, but later on she died on 18.6..2000 itself. It was alleged that the appellant tortured his wife due to non-fulfillment of demand of dowry and thereafter. administered her poison.

3. The police after investigation, submitted charge-sheet against the appellant and thereafter the appellant was put on trial.

4. The defence was denial of the offence alleged in his statement u/s 313 Cr PC the appellant took the plea that since his wife had got no issue and, therefore, she committed suicide out of depression. The defence case therefore, is that the deceased consumed poison herself and it was not administered by the appellant.

5. In order to substantiate the charges, altogether 8 witnesses were examined by the prosecution PW 1, Mrinal Roy and PW 2, Bhikha Oraon, are the witnesses on the point of torture to the deceased by the appellant. They also proved some letters, which were marked as Exts. 1 to 1/7, PW 3, Sadhan Kumar Roy and PW 4, Ajay Kumar Roy, are the brothers of the deceased and PW 5, Anil Kumar, in whose house, the appellant, Madhusudan Roy @ Madhu, used to reside as a tenant PW 6 is the informant and PW 7 is the Doctor, who held post-mortem examination of the deceased and PW 8 is the Investigating Officer.

6. On behalf of the defence also 10 witnesses were examined.

7. The trial Court on consideration of the materials on record, held the appellant guilty and thereby convicted and sentenced him as stated in earlier paragraph.

8. Mr. Afaque Eqbal, learned counsel appearing for the appellant has submitted that there was abnormal delay in lodging the FIR. It is submitted that the informant waited till the cremation of the dead body of his deceased sister and then he chose to lodge the First Information Report. It is further submitted that according to the prosecution though the informant had gone to see his sister in the Hospital and that time she was alive but he did not inform the police and as such it makes the FIR suspicious.

He further submitted that there is no eye-witness to the occurrence and therefore, the whole case hinges on the hearsay evidence or on circumstantial evidence. He further submitted that no independent witness was examined on behalf of the prosecution to prove that there was any demand of dowry or there was torture to the deceased by the appellant. He further submitted that the prosecution did not prove the fact that the appellant had poison with him and he, in fact, administered poison to the deceased. Elaborating his argument, it was

submitted that if the appellant would have administered poison to the deceased by force then she must have resisted and then some force must have been applied by the appellant to the deceased, causing some sort of injury to the deceased, but the Doctor has clearly stated that there was no mechanical, either external or internal, injury found on the body of the person of the deceased; therefore, the story of administration of poison cannot be believed.

9. In order to test the argument of the learned counsel for the appellant let us scrutinized the evidence adduced on behalf of the prosecution as well as of the defence.

10. PW 1, Mrinal Roy, who is the brother-in-law (bahnoi) of the deceased as well as of the informant, has stated that he came to know from the Newspaper on 19.6.2000 that Sandhya Roy died in Rajendra Medical College Hospital after consuming poison. He has further stated that there was some tension in the family because the deceased (Sandhya Roy) was being tortured by her in-laws for dowry. Sandhya had also filed maintenance case, which was subsequently compromised, as the appellant undertook to keep his wife nicely. This witness has proved three Photostat copies of the letters, which were marked as Exts. 1 to 1 /2 and he identified his signature on the seizure-list Ext. 1/3. Learned counsel for the appellant submitted that this appellant is a hearsay witness, had no personal knowledge of the occurrence his evidence is based on newspaper reports.

11. PW 2, Bhikha Oraon has stated in his evidence that he was in visiting terms with the informant, Shailesh Kumar Roy. He further stated that Sandhya Roy was married to the appellant and the informant used to tell him that in-laws of Sandhya Roy were demanding money and they were also torturing her by assaulting. This witness also proved some signatures on the letters, which were marked as Exts. 1/5, 1/6 and 1/7.

12. PW 3, Sadhan Kumar Roy is the younger brother of the deceased. Sandhya Roy, has also stated about the marriage of Sandhya Roy with the appellant. This witness has specifically stated that whenever he visited the "sasural of Sandhya Roy he found that Sandhya Roy was not happy there and whenever he asked his sister, she used to cry and then to tell him that because of non-fulfilment of demand of money, she was being assaulted by her in-laws, He has further stated that after 3-4 months of the marriage, his sister was sent back by the appellant, telling that he would take her back after making proper arrangement. But, even after three months he did not take his wife and then they had a talk with the appellant, but he demanded money and thereafter Sandhya Roy filed a maintenance case, which was subsequently compromised. He has further stated that Rs. 10,000 (ten thousand) was given by him to the appellant. On 17.6.2000, he received phone that his sister has consumed something, then they came to Rajendra Medical College Hospital, Ranchi, but she was not in a position to talk, she was in semi conscious state of her mind and she died on the next date i.e, on 18.6.2000 in the Hospital. In the cross-examination, this witness has

specifically stated that the amount of Rs. 10,000/- was given to the appellant in three instalments i.e Rs. 5000/-, Rs. 3000/- and Rs. 2000/. He has further stated that his sister was not mentally depressed rather she was mentally fit.

13. PW 4, Ajay Kumar Roy is another younger brother of the deceased, Sandhya Roy. He has stated that after the marriage of Sandhya Roy, appellant Madhusudan Roy brought her to his house and told that his financial condition was bad and when his financial condition would improve, he would take back his wife. He has further stated that appellant, Madhusudan Roy had demanded Rs. 45,000/- as dowry which was not paid and as such he did not take back his sister, then she filed a maintenance case.

14. PW 5, Anil Kumar is a neighbour of appellant, Madhusudan Roy. He has stated that there had been quarrel between the husband, Madhusudan Roy and his wife, Sandhya Roy. He has further stated that Sandhya Roy died in Rajendra Medical College Hospital. Ranchi and she was brought to the Hospital by the elder brother and "bhabhi of Madhusudan Roy. In cross-examination, he has stated that the appellant, Madhusudan Roy was in service of Railway. Learned counsel for the appellant has drawn my attention to paragraph 29 of his cross-examination wherein this witness has stated that he had not seen the appellant assaulting Sandhya Roy at any time within one year.

15. PW 6 Shailesh Kumar Roy is the informant and has stated that his sister, Sandhya Roy was married to the appellant, Madhusudan Roy on 18.5.1996. After the marriage, his sister went to matrimonial house and she lived there for one and half months. Thereafter the appellant brought his sister (Sandhya Roy) to the house of the informant on pretext that his house was small and his financial position was also weak. The appellant left his wife, Sandhya Roy in his house.

This witness has specifically stated that the appellant used to demand dowry, but he was not in a position his fulfill the demand. The appellant left his wife for long period and then the informant requested him to take back her, but the appellant refused and told him that unless the money is paid to him, he would not take her back. Thereafter maintenance case was filed by Sandhya Roy which was subsequently compromised. This witness further stated that after the compromise, he had sent Rs. 10,000/- through his younger brother to the appellant on his demand. But on 17.6.2000 at 3 p.m. he got a telephonic information that his sister is admitted in the Rajendra Medical College Hospital, Ranchi and then he went to see her in the hospital where he found his sister not in a conscious state of mind and she was crying "glass-glass" and ultimately she died on 18.6.2000.

From the evidence of the informant, it appears that he has fully supported his case made in the" fardbeyan and he has proved the seizure-list as Ext. 3 to show that he has produced letters before the Investigating Officer written by appellant, Madhusudan Roy, demanding money.

16. PW 7, Dr. Ramsewak Sahu has stated that on 9.6.2000, he was posted as

Medical Officer at RMCH, Ranchi in the Forensic Medicine Department and on that day he conducted the post-mortem examination on the dead body of Sandhya Roy. He stated that there was no injury on her person and that there was no evidence of mechanical injury either external or internal. He further stated that Viscera was preserved and was sent for examination and therefore, the opinion regarding cause of death was kept reserved pending chemical examination of Viscera. The time elapsed since death within twelve to thirty six (12-36) hours before post-mortem examination. He proved the post-mortem examination as Ext. 5.

17. PW 8, Abhay Kumar Sinha is the Investigating Officer, he proved the formal FIR, marked as Ext. 6 and also proved the fardbeyan marked as Ext. 7. In his statement, he has stated that the letters were produced before him, in which demand of money was made by the appellant, Madhusudan Roy therefore, it was apparent that behind the occurrence there was demand of dowry.

18. On the other hand, the defence also examined 10 witnesses, denying the charges DW 1, Deomuni Pandey, DW 2, Amarnath Sharma have stated that they heard that the wife of Madhusudan has consumed something on 16.6.2000. He went to the Hospital with his wife. They also stated that there was good relationship between the husband and the wife and they did not see the appellant assaulting the deceased. DW 3 has stated that at the time of occurrence he came only after hearing the "hullah." They have also stated that the appellant had good relationship between the husband and the wife he never assaulted her. He denied to have any knowledge that there had been case between the husband and the wife. DW 4, Samresh Roy is the brother of the appellant, Madhusudan Roy and DW 7 Parul Roy is the mother of the appellant. DW 8, Chin-may Roy is the father of the appellant, DW 9 is the brothers' wife of the appellant and DW 10, Ashok Roy is also the brother of the appellant. All those witnesses have stated that there was no demand dowry from their side and there had been good relation between the husband and wife. DW 4, who is the brother Of the appellant in para 4 of his cross-examination, has stated that he had no knowledge that Sandhya had filed any case against the appellant.

This statement of the witness clearly shows that he was suppressing real fact and was not coming with the truth. DW 6, Dr. Niranjan Prasad has stated that the deceased, Sandhya Roy was admitted in his unit on 16.6.2000 and she died on 18.6.2000. He further stated that during his period there had been no recovery. In his cross-examination, has stated that she never regained senses.

From the evidence of this defense witness, it appears that the case is of poisoning and of unnatural death. This fact is also evident from the post-mortem report as Ext. 5.

19. From the evidence discussed above, it is clear that the deceased was subjected to cruelty or harassment connected with the demand of dowry. Whether she has committed suicide by consuming poison or she was

administered poison by the appellant is irrelevant.

20. The Supreme Court in the case of Smt Shanti and Another Vs. State of Haryana, , has held that in the case of dowry death, question whether the death of homicidal or suicidal is relevant because such death was in abnormal circumstances. Relying on the said decision, it was again held by the Supreme Court in the case of Kans Raj Vs. State of Punjab and Others, that suicide is one of the modes of death falling within the ambit of Section 304-B of the Indian Penal Code. In the present case, the evidence of the informant and PW 3 and PW 4 read with the letters exhibited on behalf of the prosecution written by the appellant demanding dowry clearly establishes that the appellant had subjected the deceased to cruelty or harassment due to non-fulfillment of demand of dowry soon before her death, which was caused in abnormal circumstances. Therefore, under the provisions of Section 113-B of the Indian Evidence Act. Presumption would be that it was the appellant, who caused the death of his wife due to non-fulfillment of demand of dowry.

21. The informant was given information on telephone regarding the consumption of poison by his sister only on 17.5.1996 and the lady, Sandhya Roy died on 18.5.1996 and on that date itself, the FIR was lodged and therefore, by no stretch of imagination it can be said that the FIR was lodged after abnormal delay. In view of my discussion and finding above, the contentions of the learned counsel for the appellant, cannot be accepted and are hereby rejected.

22. I hold that the learned trial Court has rightly convicted and sentenced the appellant for the offence u/s 304-B of the Indian Penal Code and for the offence u/s 498-A of the Indian Penal Code. Accordingly, having found no merit in this appeal, the same is hereby dismissed.