
(2008) 01 OHC CK 0021

In the Orissa High Court

Case No : Jail Criminal Appeal No. 259 of 1997

Mahendra Das and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 299
Penal Code, 1860 (IPC) — Section 147, 148, 149, 304, 324

Citation : (2008) 1 OLR 139 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : Anil Deo, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

1. Appellants assail the judgment and order dated 23.8.1997 passed by the Addl. Sessions Judge, Khurda in S.T. Case No. 48/449 of 1996 convicting both of them of the offence under Sections 176/201/302 of I.P.C. and Section 3 of the D.P. Act and sentencing each of them to undergo imprisonment for life for the offence u/s 302 of I.P.C. No separate sentence was imposed for the offence under Sections 176/201 of I.P.C. and Section 3 of the D.P. Act. However, it was ordered that in case the order of conviction u/s 302 of I.P.C. is set aside, each of them would be deemed to have been sentenced to undergo R.I. for 5 years together with a fine of Rs. 15,000/- in default of payment of fine, R.I. for one year for the offence under Sections 3 of the D.P. Act. Further, they would be deemed to have been sentenced to undergo S.I. for one month and two years for the offences under Sections 176 and 201 respectively.

2. Shorn of unnecessary details, prosecution case is that accused Mohendra Das led Hilli Das to the altar in the year 1992 in Dhabaleswar Temple of village Dhuanla. As per the demand of the accused-Appellants who are father and son, a sum of Rs. 3,000/-, two gold rings and other household articles were given at the time of marriage towards dowry. The couple led happy conjugal life till the birth

of a female child i.e. two years after their marriage. Then skirmishes erupted between the accused persons in one hand and Hilli on the other. They tortured her in many a way and even did not provide her food. On 13.4.1996 at about 8 A.M. accused-Appellant Laxmidhar Das went to the parental house of Hilli and informed her parents that as Hilli was suffering from diarrhoea she was admitted to Balugaon hospital. Without delay, father of Hilli (P.W.6) and accused Laxmidhar went to the nearest bus stand and boarded a bus. While both of them were going to Balugaon alighting at Chandeswar bus stand, accused-Appellant Laxmidhar stealthily went away. So P.W. 6 alone went to the house of the accused-Appellants only to be informed that Hilli expired on the previous day and that her dead body had already been cremated. Doubting foul play, P.W.6 lodged a written report before the O.I.C. of Tangi P.S. (P.W.8). As the allegation contained in the report i.e. the F.I.R., revealed a cognizable case under Sections 498(A)/302/304-B/201 read with Section 34 of I.P.C., P.W.8 registered P.S. Case No. 57 of 1996 and took up investigation. In course of investigation, he examined the witnesses, visited the cremation ground, seized some ashes and half burnt bones, he also seized the dowry articles and prepared seizure lists in respect thereof, arrested the accused persons, forward them to Court and after completion of investigation, finding a prima facie case submitted charge sheet against them. The case having been committed to the Court of Sessions, it was transferred to the Court of Addl. Sessions Judge, Khurda who framed charge against accused Laxmidhar Das and Narayan Das for the offence under Sections 498-A/302/304-B/201/176/34 of I.P.C. and Sections 3 and 4 of the D.P. Act all read with Section 34 of I.P.C. He also charged accused Mahendra Das for the offence under Sections 498-A/302/304-B/201/176 of I.P.C. and Sections 3 and 4 of the D.P. Act. Since the accused persons denied the charge and claimed to be tried, the trial Court conducted the trial.

To bring home the charges against the accused persons, prosecution examined nine witnesses as against none by the defence. Prosecution also relied on documents marked Exts. 1 to 7.

3. After assessing the evidence on record, trial Court acquitted accused Mahendra Das of all the charges. He also acquitted the accused-Appellants of the offence u/s 498-A/304-B of I.P.C. and Section 4 of D.P. Act, but convicted them for the offence under Sections 302/176/201 of I.P.C. and Section 3 of the D.P. Act read with Section 34 of I.P.C. and sentenced them in the above stated manner.

4. Learned Counsel for the Appellants submits that admittedly there is no eye witness to the occurrence. The trial Court convicted the Appellants solely basing on the circumstantial evidence, which do not form a complete chain pointing to the guilt of the Appellants. So, the order of conviction u/s 302/201 of I.P.C. deserves to be quashed.

5. The trial Court catalogued the following circumstantial evidence against the Appellants:

- (i) The deceased died an unnatural death i.e. to say under circumstances other than normal within a period of 7 years from the date of her marriage.
- (ii) The unnatural death of the deceased took place in her marital house.
- (iii) There was demand for dowry prior to the marriage.
- (iv) Accused Laxmidhar and Mahendra were pursuing the deceased to bring one thing or other and even food cereals from her parents after her marriage.
- (v) Accused Laxmidhar falsely reported to P.W. 6 that his daughter was suffering from diarrhoea and had been admitted to the hospital at Balugaon even though by then she was already dead.
- (vi) The deceased once ran away to her parental house as because she was assaulted by accused Mahendra, and returned to the marital house 20 days prior to her death only when accused Mahendra begged apology for assault.
- (vii) Neither the police nor the parents of the deceased was intimated about her death, and that her dead body was consigned to the flame without any information.

In a case based on circumstantial evidence there is always the danger that conjecture and surmises may be illusioned as legal proof. So, in such a case the Courts must be cautious. Where the circumstances exclude every hypothesis but points towards the guilt of the accused, then only an order of conviction should be recorded. No doubt motive is not to be looked for in each and every crime committed, because human mind is mysterious and often the culprit himself does not know what moved him to commit the crime. But in a case where only circumstantial evidence is available, one normally starts looking for the motive behind the crime. In the case at hand all the circumstances catalogued above are not sufficient to exclude every hypothesis but the guilt of the accused; so far the offence u/s 302 of I.P.C. is concerned. Moreover, no strong motive can be ascribed to either of the Appellants for commission of the murder. So we are of the considered opinion that the trial Court erred in convicting the Appellants u/s 302 of I.P.C. So, the order of conviction and sentence as passed by the trial Court u/s 302 of I.P.C. deserves to be set aside. Once the Appellants are not found guilty for the offence u/s 302 of I.P.C, they cannot be held liable for the offence u/s 201 of I.P.C.

6. Learned Counsel for the Appellants urged that there is no material to fasten the Appellants with the offence u/s 176 of I.P.C. To establish an offence under this Section, the prosecution has to prove that accused was legally bound to give any notice or furnish certain information to a public servant and that he intentionally omitted to do so. In the present case, the deceased died within seven years of her marriage under suspicious circumstance. There is nothing to show that she suffered a natural death. The Appellants also did not take the plea that she died a natural death. So, death of the deceased might be suicidal, accidental or homicidal. As required u/s 40(i)(d) of Code of Criminal Procedure

and particularly when the deceased died in their house and they were her closed relatives, the Appellants were duty bound to communicate about the death of the deceased either to the nearest Magistrate or to the Officer-in-Charge of the nearest Police Station, but they did not do so. On the other hand, one day after the cremation of the dead body of the deceased Appellant, Laxmidhar Das went to the parental house of the deceased and gave false information to her parents that she was suffering from diarrhea. This conduct indicates that the Appellants intentionally omitted to furnish the information u/s 176 of I.P.C. to nearest Magistrate or the O.I.C. of the nearest police station. As such, the trial Court rightly convicted the Appellants u/s 176 of I.P.C.

7. As regards the offence u/s 3 of the D.P. Act, learned Counsel appearing for the Appellants submits that, it is found from the evidence of P.W.7, who is none else than the mother of the deceased, that they voluntarily paid cash of Rs. 3,000/- to the Appellants. The trial Court committed gross error in convicting the Appellants u/s 3 of the D.P. Act. On perusal of evidence we find that in her examination in chief, P.W.7 stated that a sum of Rs. 3,000/- and a gold ring were demanded towards dowry prior to settlement of the marriage and the same were given by her husband to Appellant, Laxmidhar in presence of the co-Appellant. During cross examination she stated that she herself and her husband decided to give a sum of Rs. 3,000/- on demand and not more. On the next breath she stated that they paid of Rs. 3000/- to the Appellants on their own volition. If the entire evidence of P.W.7, with regard to giving of dowry is read together, it would imply that a sum of Rs. 3000/- and one gold ring were given to the Appellants towards dowry on their demand and it was not voluntary, particularly when P.W.6 in very unambiguous term deposed that he did not give the dowry on his own volition. Moreover, the evidence of P.W.7 has been corroborated by evidence of P.Ws. 3, 5 and 6, who deposed that a sum of Rs. 3,000/- and a gold ring and other house hold articles were demanded on behalf of the Appellants. Learned Counsel for the Appellants submits that during cross-examination of P.W.6, it was elicited from him that the demand of dowry was made by Suria Rana, the mediator of the marriage, so the Appellants cannot be liable for the offence u/s 3 of the D.P. Act. Even if the demand was made by the mediator, still then when the Appellants received the dowry in form of cash and ornaments, they shall be liable u/s 3 of the D.P. Act. So the trial Court has rightly convicted the Appellants for the offence u/s 3 of the D.P. Act.

In the result the JCRLA is allowed in part by setting aside the order of conviction under Sections 302 and 201 I.P.C. and maintaining the order of conviction and sentence passed u/s 3 of the D.P. Act, 1961 and Section 176 of I.P.C. On serving the sentence imposed u/s 176 I.P.C. and Section 3 of the D.P. Act, the Appellants be set at liberty from the Jail in S.T. No. 48/449 of 1996 of the Court of Addl. Sessions Judge, Khurda. The period of detention be set off.