

(2010) 01 OHC CK 0040

In the Orissa High Court

Case No : Criminal Revision No's. 1432 and 1236 of 2007

Manjulata Behera and Another

APPELLANT

Vs

State of Orissa
 Hemanta Kumar Behera Vs State of
Orissa ana Another

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34, 498A

Citation : (2010) CLT 308 (Suppl CrI)

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : P.K. Muduli, S. Pattnaik and A. Mohapatra, for the Appellant; Addl. Standing Counsel, F.R. Mahapatra, M.K. Panda, R.K. Nayak and S.K. Panda for intervener, for the Respondent

Judgement

S.K. Mishra, J.—These Criminal Revisions have been preferred against order dated 05.07.2007 passed in G.R. Case No. 33 of 2007 by the Court of S.D.J.M., Udala taking cognizance of the offence under Sections 498-A, 302, 304-B, 201/34, I.P.C. read with Section 4 of the Dowry Prohibition Act.

2. Prosecution alleges that in the month of June, 1997 marriage of Sanjukta was solemnized with Narayan Behra. At the time of marriage, there was demand for dowry, which was adhered to by the parents of the deceased. Thereafter also, the deceased was subjected to cruelty and ill-treatment for demand of dowry. In the meantime, she was blessed with two sons. On 27.01.2007 afternoon, the informant received the news that his srster Sanjukta was seriously ill. He along with his relations proceeded to village San Bisol. There they found the deceased lying dead. There were burn injuries on her body and bleeding from mouth, nose and head. Thereafter, the informant lodged the F.I.R. before the O.I.C., Kaptipada P.S. The police investigated into the case and finally submitted charge-sheet on 26.5.2007 for the alleged offence u/s 498-A, 302, 304-B, 201/34, I.P.C.

read with Section 4 of the Dowry Prohibition Act against accused Narayan Behera and charge-sheeted other four accused persons namely Smt. Manjulata Behera, Basanta Kumar Behera and Hemanta Kumar Behera under Sections 498-A, 304-B, 201/34, I.P.C. read with Section 4 of the Dowry Prohibition Act. Learned S.D.J.M., Udala took cognizance of the offence under Sections 498-A, 302, 304-B, 201/34, I.P.C. read with Section 4 and issued process of the Dowry Prohibition Act and issued process against all the accused persons. Such order of cognizance is challenged in this revision.

3. The contentions raised by the learned Counsel for the Petitioner may be summarized as follows :

(i) Since the death of the deceased occurred after ten years of the marriage, offence u/s 304-B is not made out:

(ii) Learned S.D.J.M. committed gross illegality by taking cognizance u/s 302, I.P.C. and issuing process against accused persons other than Narayan Behera;

(iii) That no offence u/s 201 of the Indian Penal Code is made out from the face of the records.

4. It is not disputed in this case that the marriage of the deceased took place with the accused Narayan Behera in the month of June, 1997. There is also no dispute that the occurrence took place on 27.01.2007, that is the date on which the deceased died. In order to attract the provision u/s 304-B, I.P.C, it must be shown prima facie that (a) if a married woman died otherwise than under normal circumstances, (b) such death was within seven years of marriage and (c) that there was cruelty and harassment in connection with the demand of dowry soon before her death. Baljeet Singh and Another Vs. State of Haryana,) is relied upon). In this case, the requirement (a) and (c) are satisfied, whereas it is the case of the prosecution that the death of the deceased was beyond seven years of her marriage. The offence u/s 304-B, I.P.C. prima facie is not attracted in this case. Hence, the order of the learned S.D.J.M. taking cognizance of the offence u/s 304B, I.P.C. is illegal.

5. Learned counsel for the Petitioner has relied upon Kishori Singh v. State of Bihar AIR 2000 SC 3725, Raj Kishore Prasad Vs. State of Bihar and another, , Bhinga Rana Vs. State of Orissa, ; Chaitanya Behera and Others Vs. State of Orissa, and argued that the Magistrate has no power to take cognizance u/s 302, I.P.C. as against the Petitioners, except Narayan. It is contended that the charge-sheet alleging the offence of murder punishable u/s 302, I.P.C. was placed only against Narayan Behera and rest of the accused persons have been charge-sheeted for the other offences. Having gone through all these decisions, this Court finds that the Courts have consistently held that after completion of investigation and filing of charge-sheet against certain accused persons, the Magistrate cannot, at the stage of taking cognizance in a case triable by the Court of Session, add some additional persons as accused to the case. Keeping in view the provision u/s 319, Code of Criminal Procedure the Courts have held that

it is the duty of the Court of Session after commencement of trial to take cognizance and issue process against who materials may come out. At the stage of cognizance in a case triable by the Court of Session, it is not open for the Magistrate to add Anr. person as accused. The ratio decided in those cases is clearly distinguishable. In this case, Petitioners have been charge-sheeted by the investigating agency. However, some of them have not been charge-sheeted for the offence of murder punishable u/s 302, I.P.C. After perusal of the records, learned lower Court found that there are material for issuing process against those persons also for the offence u/s 302/34, I.P.C. in addition to the charges leveled. So there is nothing wrong in the order of the learned Court below as far as that aspect is concerned.

6. The next question that arises in this case is that, whether the learned S.D.J.M. was correct in taking cognizance of the offence u/s 201 of the I.P.C. A reading of the F.t.R. and statement of witnesses like Girija Shankar Behera indicates that the Petitioners were present at the time of occurrence. The eye witnesses attributed the assault by means of a wooden plank on his "Bapa". He has also indicated that as a result of which the deceased fell down. The postmortem examination report reveals that there was extensive (95%) burn of the body of the deceased. There was depressed fracture of the right parietal bone. The doctor opined that the death was due to hemorrhage, shock and injury to the vital organ like brain. Prima facie, such facts show that the deceased was murdered and then there was an attempt to disappear evidence by burning her dead body. Hence, taking cognizance of the offence u/s 201, I.P.C. is no way irregular or illegal.

7. Keeping in view the aforesaid circumstances, the Criminal Revision are allowed in part. Cognizance of offence u/s 304-B taken by the learned S.D.J.M., Udala on 05.07.2007 in G.R. Case No. 33 of 2007 is hereby set aside. However, the cognizance of the offence taken under Sections 498-A, 302, 201/34, I.P.C. read with Section 4 of the Dowry Prohibition Act left undisturbed. Both the Criminal Revisions are accordingly disposed of.