

(2020) 01 JH CK 0162

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 79 Of 2006

Mihir Kumar Ghosh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323, 324, 326, 498(A)

Citation : (2020) 01 JH CK 0162

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Indrajit Sinha, Pramod Kr. Choudhary

Final Decision : Disposed Of

Judgement

Heard Mr. Indrajit Sinha, learned counsel for the appellant and Mr. Pramod Kr. Choudhary, learned A.P.P., appearing for the State.

This appeal is directed against the judgment of conviction dated 09.12.2005 and order of sentence dated 12.12.2005 passed by Shri Arun Kumar

Dutta, Additional Sessions Judge, Ghatsila in Sessions Trial No. 147/2004 whereby and whereunder the appellant has been sentenced to undergo R.I.

for seven years for the offence u/s 307 of the IPC. Further R.I. for five years for the offence u/s 326 of the IPC and R.I. for two years each for the

offence under Sections 324 and 498 (A) of the IPC. All the sentences were directed to be run concurrently.

Bahragora P.S. Case No.107/2003 has been registered under Sections 323, 326, 307 & 498(A) on the fardbeyan of the informant, namely, Alka

Ghosh (P.W.-4). As per the F.I.R., fifteen years ago, marriage has been solemnized with the accused. There was a demand of dowry to the tune of

Rs. 50,000/- at the time of marriage and due to non fulfillment of demand,

informant was being constantly harassed. Two daughters have born out of the wedlock. One is aged about 13 years, namely, Manshi Ghosh (P.W.-1) and another is Satabdi Ghosh (P.W.-2) aged about 9 years at the time of occurrence. As per story disclosed in the F.I.R., on 17.11.2003 at about 8 AM, she has been assaulted by â??Bhujaliâ?? by the appellant with the help of his parents for non fulfillment of the demand of dowry. Two bhujali blows have been given to her, one hit at her head and another has resulted in severance of the thumb. On the conclusion of investigation, the appellant has been charge sheeted for the above sections.

Thereafter, cognizance has been taken. Case has been committed to the court of sessions and ultimately, charge has been framed under Sections 498(A), 307, 324 & 326 of the IPC to which appellant pleaded not guilty. Accordingly, trial has commenced.

To substantiate the prosecution story altogether seven witnesses have been examined.

P.W.-1, Manshi Ghosh, elder daughter of the informant, has supported the demand of dowry but to the point of assault, as per her version, her uncle has assaulted the informant.

P.W.-2, Satabdi Ghosh, another daughter of the informant, has also narrated the same as narrated by P.W.-1.

As per the testimony of P.W.-1 and P.W.-2, the appellant is not the assailant.

P.W.-3, Bidhan Chandra Patro is brother of the victim but he is not an eye witness. He has supported the factum of demand of dowry.

P.W.-4, Alka Ghosh, who is the victim herself, has supported the narratives as disclosed in the F.I.R.

P.W.-5, Shashi Bhushan Karak, is an eye witness, who has visited the place of occurrence on hearing hulla and also saw the appellant with bhujali.

P.W.-6, Avadhesh Prasad Sinha is the Medical Officer, who has examined the injury of the informant. As per testimony of P.W.-6, altogether 13

injuries were found. All the injuries are simple in nature except injury no. 13, which is grievous in nature. All the injuries have been caused by sharp cutting weapon.

P.W.-7, Jagdanand Jha, is I.O. of the case. In his testimony, he has supported the prosecution story.

Learned counsel for the appellant has argued that even if the prosecution story is

accepted by court, the ingredient of Section 307 is not made out.

For this purpose, he has relied upon the judgment of Apex Court reported (2017) 5 SCC 764 in the case of Dinesh Yadav vrs. State of Jharkhand.

Relevant para-13 of this judgment is quoted hereinbelow:-

However, having regard to the totality of the facts and circumstances of the matter and the material on record, it is clear that the appellant-

accused did not make any attempt to commit murder of the informant. The incident has taken place on the spur of the moment as the

informant had objected the appellant from cultivating the land which is adjoining his house. Hence the offence, committed by the appellant

would come under Section 326 IPC. Learned counsel for the appellant submitted that the appellant is more than 72 years of age and

leniency may be shown in his favour by way of imposing lesser sentence. The injured had sustained the compound fracture of forearm.

Keeping in mind the aggravating and mitigating circumstances and in the interest of justice, the appellant should be sentenced to undergo

simple imprisonment for one year and to pay fine of Rs.50,000/-

It has been further argued that P.W.-1 and P.W.-2, are the daughters of the informant, who have testified that the assailant was uncle not the father.

Thus, there is contradiction between the testimony of eye witness and as such there is a cloud of doubt.

Per contra, learned APP has supported the judgment of conviction and argued that the injured witness i.e. informant has supported the incident, which

gets corroboration by the medical evidence proved by P.W.-6. Further independent witness-P.W.-5 has testified that he has seen the appellant with

bhujali immediately after the occurrence. Thus, there is enough evidence for sustaining conviction of the appellant for the charged sections.

Testimonies of P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have supported the factum of demand of dowry to the tune of Rs. 50,000/-. Thus, the ingredient

of Section 498A has also been proved.

Heard learned counsel for the parties.

From perusal of evidence and material available on record, it appears that the victim has suffered 13 injuries. Except one, all injuries are simple in

nature. None of the injuries are sufficient in ordinary course of nature to cause death. Section 307 of the IPC is nothing but failed murder and to

convict a person under Section 307 of the IPC, it is necessary that intention to kill must be proved or the injury caused must trigger the death. In the present case, intention to cause death has not been proved as there was no intervening circumstance. Further the injuries are not sufficient to trigger the death and as such the conviction of the appellant under Section 307 of the IPC is not sustainable. Accordingly, appellant is discharged from Section 307 of the IPC.

So far as conviction under Section 326, 324 and 498A is concerned, the testimony of P.W.4 and P.W.-7 proves the factum that the appellant has assaulted the informant with bhujali. The injuries get corroboration by the medical evidence proved by P.W.-6. Injury No.13 suggests that her left arm thumb got severed. The appellant has caused grievous injury by dangerous weapon. Thus, ingredient of Sections 324 and 326 is made out and proved.

So far as ingredient of Section 498A is concerned, the testimonies of P.W.-1, P.W.-2, P.W.-3 and P.W.-4 prove the factum of demand of dowry of

Rs.50,000/-. The cruelty/harassment to the informant has also been proved by the said witness. Thus, considering the above evidence and material on record, this Court finds that the appellant has rightly been convicted under Sections 498A, 324 and 326 of the IPC.

The incident is of the year 2003, after 15 years of marriage. The appellant and the informant have blessed with two female children. The trial has been concluded in the year 2005 and the appeal is being heard in the year 2020. The appellant has remained in custody pre trial and post trial for about 2 years and two months respectively.

Considering the length of custody and relationship between the parties, sentence of the appellant is reduced to the period already undergone. Further a fine of Rs.10,000/- is imposed upon the appellant to be paid to the informant within two months from today.

Accordingly, the judgment of conviction dated 09.12.2005 and order of sentence dated 12.12.2005 passed by Shri Arun Kumar Dutta, Additional

Sessions Judge, Ghatsila in Sessions Trial No. 147/2004 is modified to the extent indicated hereinabove. Accordingly, the appeal stands disposed of with above modification.