

(2007) 06 PAT CK 0001
In the Patna High Court
Case No : Criminal Appeal No. 3 of 2004

Naresh Mistry @ Mukesh Mistry and Others
Vs

APPELLANT

The State of Bihar

RESPONDENT

Date of Decision : 01-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 304B, 34, 498A

Citation : (2007) PLJR 733

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Dharendra Kumar Sinha, for the Appellant; J. Upadhyay for the State and Mr. Hriday Prasad Singh for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—All the three appellants herein faced trial for commission of offences punishable under Sections 304B, 498A and 201 of the Indian Penal Code in Sessions Trial No. 342 of 2000 arising out of Phulwari P.S. Case No. 262/98. G.R. No. 2663/98 and on being found guilty of the aforesaid three charges by Judgment and order dated 15th December, 2003 passed by Sri Bharat Prasad Yadav, the then 3rd Additional Sessions Judge, Patna whereas appellant, Naresh Mistry the husband of the deceased, has been sentenced to suffer rigorous imprisonment for ten years u/s 304B of I.P.C., appellants Ramchandra Mistry and Sumitra Devi, have been sentenced to suffer rigorous imprisonment for seven years u/s 304B of I.P.C. all the three appellants have further been sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs. 2000/- each u/s 498A of I.P.C, and each of them have also been sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs. 2000/- each for offence u/s 201 of I.P.C. It was further directed that in default in payment of fine they were to undergo simple imprisonment for six months and all sentences were directed to run concurrently. As per the allegations in the fardbeyan of Ramprit Mistry given at 3.30 P.M. on 12.7.1998 the marriage of his daughter, Nilu Kumari,

was solemnised with Naresh Mistry on 14.5.1997 whereat cash worth Rs. 11,000/-, bicycle, watch, Sewing machine and ornaments were presented to the accused persons. It is alleged that after the marriage Ramchandra Mistry, his Samadhi, and Naresh Mistry used to raise grievance of insufficient articles having been given and demanded that a T.V., Tape Deck and one set of utensils be given failing which they would not take the bride to the marital home. It is said that the informant expressed his inability to dole out further money and assured to fulfil the demand when he could muster sufficient funds whereupon the Duragaman took place on 6.3.1998. It is alleged that on 8.6.1998 when the informant alongwith his son, Niraj, went to the house of his daughter and asked the accused persons for Bidai his daughter his Samdhin and son-in-law refused Bidai stating that the same would not be possible until and unless the demanded articles were furnished. The informant further stated that his daughter Nilu Kumari had disclosed to him and his son that for the non-fulfillment of the demand she was subjected to assault by the accused persons. It is also said that the informant again requested the accused persons for Bidai but they instead were threatened and there was reiteration of fulfilling the demand within a month. It is alleged that on 4.7.1998 one Jamuna Prasad of Village Jaganpura came to him and informed him that his daughter had been killed by the accused persons by setting her on fire, and they had concealed the dead body. It is said that on receipt of the information the informant went to village Jaganpura and came to know that his daughter had been killed by the accused persons who had also concealed the dead body and on coming to the house of the accused the informant was abused and driven away. It has been claimed that Nilu Kumari had been burnt to death by the accused persons for non-fulfillment of dowry.

2. On the basis of the said fard beyan Phulwari P.S. Case No. 262/98 under Sections 498A, 304B/34, of I.P.C, was registered and the police after due investigation submitted a charge sheet under Sections 498A, 304B, 201/34 of I.P.C. and 3/4 of Dowry Prohibition Act.

3. In the court of Sessions charges under Sections 304B, 498A and 201 of I.P.C. were framed against all the three accused to which they pleaded not guilty and claimed to be tried. It would also appear from the trend of cross examination that the defence took the plea that in no way were the appellants answerable for the killing of the deceased and the circumstances too were not formidable to bring the offence within the mischief of Section 304B of I.P.C. as the Sari of Nilu Kumari accidentally caught fire while she was cooking food. However, the defence neither examined any witness nor adduced documentary evidence in support of its plea.

4. The prosecution in support of its case examined as many as eight witnesses of whom Vinay Prasad (P.W.7) and Bhagwant Pandit (P.W. 8) are formal witnesses.

5. A brief narration of evidence of the prosecution witnesses could be congenial for deciding the appeal.

6. Dukhi Mistry, P.W. 1, in course of his deposition in court stated that Nilu Kumari was married to Naresh Mistry in May, 1997 and after remaining there for four days she came back to the house of her parents and for Roksadi the accused persons demanded a T.V., a set of steel utensils and one Tape deck which informant, Ramprit Mistry, assured to give after Roksadi and accordingly Nilu Kumari went to her sasural and within two months he heard that Naresh along with his parents had killed Nilu by burning in July, 1998. However, P.W.1 in his cross examination disclosed that whatever he had stated in the Chief was on the basis of hearsay and no demand was made in his presence. He also stated that he in his statement u/s 161 Cr. P.C. told the police that whatever he is stating was hearsay and that he had heard only that the accused persons had killed Nilu. He admitted that Ramprit Mistry was his adjacent next door neighbour and that they were not related to each other in any way. P.W. 2 Luxman Paswan stated that Nilu was married to Naresh Mistry and she had remained in her sasural for 2-4 days after the marriage and it was after one year that the roksadi took place. He also stated that the father of the deceased had gone for Bidai but the accused persons did not agree until such time that the demanded articles were given where after he came back and after sometime Jamuna Prasad informed him about the death of Nilu. In course of his cross examination P.W. 2 stated that he had not received any summon from the court and it was Ramprit who had brought him over to depose in court. He admitted that whatever he had stated in court was hearsay and he had not seen anything with his own eyes. He also stated that his house had a distance of about 2-3 Kms. from the house of Ramprit and he had occasions to visit Ramprit's house. He also admitted of having taken food at Ramprit's place on the occasion of the marriage.,

7. Niraj Kumar (P.W. 3) is the brother of the deceased Nilu Kumari and the son of the informant. He stated in court that his sister Nilu was married to Naresh Mistry on 14.5.1997 and she had remained in her sasural for about 4 days where after she had returned to her Naihar. On her return she gave out that her parents-in-law as also her husband raised grievance of insufficient articles having been given at the marriage and had demanded a TV., Tape Deck and one set of steel utensils. He went on to state that after a year when they had gone for her Roksadi the accused; persons reiterated their demand. However, on a request the roksadi was performed on 6.5.1998 and when he and his father went for Bidai the accused persons gave out that unless the demand was met the Bidai would not take place. He also stated that Nilu disclosed to them that the accused persons abused and assaulted her for non-fulfillment of the demand whereupon they returned home and it was on 6.7.1998 that Jamuna Prasad, a resident of Jaganpura, came over to their house and informed them that the accused persons had killed Nilu Kumari and had also concealed the dead body. He also stated that on receipt of information he alongwith his parents had come over to Jaganpura where the villagers informed them that the occurrence had taken place on 4.7.1998 and when they reached the house of Ram Chandra Mistry the accused persons abused and threatened them.

8. In course of his cross examination P.W. 3 stated that his sister had studied till class-VII and that neither she nor any of them had lodged any complaint regarding the ill-treatment with either the police or any other official. He also admitted that notwithstanding her complaint of ill-treatment the Roksadi had taken place and his sister had lived in her Sasural for about two months thereafter. He further admitted that during these two months neither the sister nor the father nor he lodged any complaint any where. He also admitted that neither the father nor he had gone to see the sister during these months at her Sasural nor had they sent any person to fetch" information. He also admitted that no information was lodged in the police station on 6.7.1998 and he and his mother had returned home and it was the father who did the running about. He also stated that on 6.7.98 his father had gone to the police station but the police did not register any case. He was not in a position to say as to when the case was registered and then voluntarily stated that it was after 2 or 3 days. He also stated that whenever the father met sister she used to feed him and when he had gone for Bidagari he had stayed there. The witness was not in a position to say as to who prepared the food in the Sasural of his sister. But he stated that in his home it was the sister who prepared the food. He was not in a position to accept the defence suggestion that Nilu's son caught fire accidentally and she died of the burns.

9. P.W. 4, Sitabia Devi, the mother of the deceased, stated in court that after the marriage Nilu Kumari had spent four days in her Sasural where after she had returned to her parental home and gave out that the accused persons were demanding a T.V., a Deck and a set of utensils. She also stated that her Samdhi Ram Chandra Mistry had come over to her place and apart from demanding a T.V. and a set of utensils threatened that unless the demand was met the roksadi would not take place. On assurance of future compliance the roksadi was performed. She went on stating that 15 days later when her husband and son went to Nilu's Sasural for bidai, the demand was reiterated and threats were advanced whereupon her husband and son had returned home. She also stated that some 15 days thereafter they came to know from one Jamuna Ji of Jaganpura that her daughter had been burnt to death by the accused persons and when her husband and son on receipt of the information went to Jaganpura they came to know from co-villagers that Nilu had been done to death by burning some two days prior thereto and when they went to the Sasural of Nilu they were abused and driven away.

10. In her cross examination P.W. 4 confessed that her daughter had not written any letter regarding her predicament in her Sasural over the demand. She admitted that they had not reported the matter to the police. She further admitted that she knew from Jamuna Ji of Jaganpura from before as he was a frequent visitor to her house. However, she could not recall the date when her husband and son had visited Nilu's Sasural or when Jamuna informed them about Nilu's death. She also admitted that the police recorded her statement some four days after she had returned from Jaganpura. She could not say as to

which other person's statement was recorded by the police on that date nor was the P.O. examined in her presence. She could not give details of the sasural house of Nilu and confessed that she had not visited the daughter in her Sasural. This witness is confused and is not certain as to what she should state. She has contradicted her own statements.

11. The informant Ramprit Mistry, figuring as P.W. 5 has corroborated his fardbeyan in toto. He narrated about his daughter being subjected to assault and cruelty for non-fulfillment of the demanded articles and the accused persons not performing bidai and threatening him and his son. He also stated that one month thereafter it was Jamuna Prasad of village Jaganpura who came to his house and informed him of the accused persons having murdered his daughter by setting her on fire and on receipt of the said information when he went to Jaganpura accompanied by his son and his wife he learnt from the villagers that his daughter had been killed on 4.7.1998 by the accused persons who had set her on fire. The witness claimed to have visited Gopalpur O.P. for lodging a case but he was advised to come after 5-6 days. He also stated that when he went to the O.P. after 5-7 days he was advised to come after two days and sensing foul play he met the Superintendent of Police and on the order of the S.P. the case came to be registered on his fardbeyan which was recorded by the police.

12. In course of his cross examination P.W. 5 has stated that his daughter was married on 14.5.1997 and having studied till the VIIth Class she could write letters. He admitted that he did not lodge any complaint on hearing from his daughter regarding demand made by her in-laws. He admitted that his son-in-law used to visit his house at interval of 2-3 months and in between marriage and roksadi his Samdhi had visited his house on two occasions. He denied having stated before the police that his son-in-law and Samdhi in course of their visit would reiterate the demand but he could not recall the dates of those visits. He also denied having lodged complaint with any official regarding the demand or of his daughter having written any letter regarding her predicament during her stay in her Sasural. He admitted that although he had disclosed to the police regarding his daughter weeping and informing him of being subjected to assault and abuse in the Sasural. He, however, did not state before the police regarding threats of dire consequences being advanced by the accused persons. He also stated that informer, Jamuna Prasad, was not related to him and he was not on visiting terms with him. This is in conflict with the statement of his wife. He also stated that he received information on 6.7.98 at around 10-11 A.M. and reached Jaganpura at around 3 P.M. He was not in a position to name the person who had informed him about his daughter being burnt to death by the accused persons. He claimed to have submitted a written report before the police when he was advised to come after 5-7 days. He also claimed to have complained to the Superintendent of Police in writing. He also stated that his son did not give out anything to the police regarding his sister being subjected to cruelty. He denied the defence suggestion of Nilu getting burnt accidentally when her sari caught fire while cooking.

13. P.W. 6, Uma Kant Mishra, S.I. of Police on 12.7.1998 was posted in Gopalpur O.P. He stated that at around 3.30 P.M. the fard beyan of Ramprit Singh was recorded by Naresh Prasad Mandal on his instructions and after the same was read to him the informant put his signature and the witness put their signatures thereupon. He identified his signature (Ext. 2). He claims to have investigated the case and recorded the further statement of the informant, inspected the P.O. the full description whereof he has furnished and thereafter recorded the statements of other witnesses and submitted the charge sheet. In course of his cross examination he confessed that he had not recorded the boundary limits of the P.O. in the case diary. He denied the defence suggestion that as there was no evidence against Ram Chandra Mistry he had not submitted the charge sheet at the first instance. He also admitted that the witnesses whose statements he had recorded were of a different village and he could not record the statement of Jamuna Prasad as he could not be traced out. He also stated that he had not recorded in the further statement of Ramprit that his daughter had wept and disclosed that the accused persons used to abuse and assault her for nonfulfilment of demanded articles. He denied having registered the case on the direction of the S.P.

14. P.Ws. 7 and 8. Vinay Prasad and Sri Bhagwan Pandit, are formal witnesses who have come to prove certain documents and in the circumstance a discussion of the deposition is not required.

15. It would appear from the depositions of the informant, his wife and son that there is no consistency in their depositions. None of the neighbors of the Sasural of the deceased were sought to be examined although the informant, his wife and son have stated in their deposition that they had on enquiry from co-villagers learnt that Nilu had been burnt to death by the accused persons. Though the witnesses stated to have learnt about torture meted out to Nilu Kumari by her husband and in-laws but they did not recall the period when either such demands were made by the in-laws or when Nilu Kumari was mal-treated or tortured by them. To crown it all, though the father and the son had been visitors to Nilu Kumari's Sasural they had never noticed any marks of violence on her person. The witnesses supporting the prosecution case are none other than the informant, his wife and son and their assertions about torture and assault made on victim, Nilu, are completely lost, in view of subsequent narrations made in the evidence. The informant has stated in his deposition that when he had visited his daughter in her Sasural he spent the night there and he had also been provided food. This apparently could not have been possible if Nilu was being tortured for non-fulfillment of demand. I am afraid that in the backdrop of the assertions of the informant, his wife and son, the court can draw any inference about the deceased, facing hostile atmosphere in the house of the husband and in-laws for which she was shown to have been killed.

16. Merely because the death took place within seven years of the marriage the appellants cannot be made answerable either under Sections 304B. 498A and

201 of the I.P.C. as the prosecution has failed to establish any of these charges. In my opinion, there is no good reason to uphold the findings of the court below for sustaining the conviction of the appellants under these provisions of the Penal Code.

17. In the circumstances, the findings of guilt and sentence recorded by the court below are not sustainable which are accordingly set aside. The appeal is allowed. It appears that appellants, Naresh Mistry @ Mukesh Mistry and Ram Chandra Mistry are on bail. They are discharged from the liability of the their respective bail bonds. It further appears that appellant, Sumitra Devi, is in custody. Let her be released forthwith, if she is not required in any other case.