
(2012) 03 JH CK 0201
In the Jharkhand High Court
Case No : Criminal Rev. No. 586 of 2010

Nirmal Mahto

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 311
Evidence Act, 1872 — Section 165
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2012) 4 JLJR 559

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Rajesh Kr. Mahtha, for the Appellant; Amaresh Kumar for the State and Mr. Atanu Banerjee for the O.P. Nos. 2 and 3, for the Respondent

Judgement

Prashant Kumar, J.—This revision is directed against the order dated 21.4.2010 passed by learned Additional Sessions Judge, F.T.C.-I, Bermo at Tenughat in Sessions Trial No. 46 of 2010, whereby he discharged opposite party no. 2 u/s 304B of the I.P.C. and transferred the case in the file of learned A.C.J.M., Bermo at Tenughat for framing of charge u/s 498A of the I.P.C. Sri Rajesh Kumar Mahtha, appearing for the petitioner, submits that learned court below without calling the viscera report gave finding that the wife of opposite party no. 2 died a normal death, possibly due to death of foetus in her womb. It is submitted that this court called the viscera report, which is at flag-"A". It is submitted that from perusal of viscera report, it appears that the deceased died due to poisoning. Thus, she died in an abnormal circumstances within seven years of her marriage. He further submits that there is allegation that accused person subjected her to cruelty soon before the death for demand of dowry. Accordingly, offence u/s 304B I.P.C. is made out.

2. Sri Atanu Banerjee, learned counsel for opposite party No. 2 submits that u/s 227 of the Cr.P.C. the court is required to see only those materials which are available in the case dairy and decide whether any offence triable by the

Sessions Judge is made out or not? It is submitted that admittedly at the time of passing of aforesaid order viscera report was not available, thus, same was not considered by the court below. He further submits that at the stage of framing of charge, it is not open for the Sessions Judge to call any document for coming to the conclusion whether any offence is made out or not?

3. Having heard the submissions, I have gone through the record of the case. From perusal of impugned order, it reveals that the learned court below had noticed that the doctor preserve viscera of the deceased. It further appears that said viscera sent to the Director, State Forensic Science Laboratory, Jharkhand, Ranchi for examination. In the aforesaid circumstance, the learned court below ought to have called for the report from State Forensic Science Laboratory according to Section 311 of the Cr.P.C. read with Section 165 of the Evidence Act. Aforesaid power u/s 311 of the Cr.P.C. & Section 165 of the Evidence Act can be exercised by the court at any stage of the case either at the time of trial or inquiry. Thus, I find that the learned court below failed to discharge its duty enumerated in aforesaid provisions.

4. This court vide order dated 27.8.2010 call for the viscera report. From perusal of the said viscera report (which is at flag-"A"), it appears that viscera of deceased contains organo-phosphorus pesticide, a highly poisonous substance. Thus, prima facie, it appears that the deceased died due to poison. Aforesaid findings of Forensic Laboratory supports the oral statements of witnesses recorded by I.O. at paragraph nos. 6, 7, 8, 9, 10, 20, 21 & 22 of the case diary. It is not in dispute that the deceased died within seven years of her marriage. There are also allegations that she had been subjected to cruelty for demand of dowry.

5. Under the aforesaid circumstance, prima facie, offence u/s 304B of the I.P.C. is made out. Thus, I find material illegality in the impugned order of the court below. Therefore, the same cannot be sustained. This revision is allowed and impugned order is set aside. The case is remitted to the court below with direction to proceed further in the case in accordance with law. Office is directed to send viscera report kept at flag-"A" to the learned court below alongwith this order for needful.