

(2023) 05 OHC CK 0096
In the Orissa High Court
Case No : Criminal Appeal No. 662 Of 2018

Prasanta Dandia @ Kaira

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 05-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 302, 304B, 498A
Dowry Prohibition Act, 1961 — Section 4
Evidence Act, — Section 113B

Citation : (2023) 05 OHC CK 0096

Hon'ble Judges : D.Dash, J;Dr. S.K. Panigrahi, J

Bench : Division Bench

Advocate : S.K. Mohanty, S.K. Nayak

Final Decision : Allowed

Judgement

D.Dash, J

1. The Appellant, by filing this Appeal, has called in question the judgment of conviction and order of sentence dated 03.07.2018 passed by the learned Additional Sessions Judge, Champua in ST. Case No.27 of 2017 arising out of G.R. Case No.287 of 2016 corresponding to Baria P.S. Case No.71 of 2016 of the Court of the learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Champua.

The Appellant (accused) thereunder has been convicted for commission of offence under sections 498-A/304-B of the Indian Penal Code, 1860 (for short, 'the IPC') and section 4 of the Dowry Prohibition Act (D.P. Act) and accordingly, he has been sentenced to undergo rigorous imprisonment for a period of four months for the offence under section 498-A, I.P.C.; rigorous imprisonment for six months and fine of Rs.1,000/- in default to undergo rigorous imprisonment for two months for the offence under section 4 of the D.P. Act and imprisonment for life with fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year for the offence under sections 304-B of the I.P.C.

2. Prosecution case is that the marriage between the accused and Rashmirekha (deceased), the daughter of Ratiranjana Pradhan (P.W.1) had taken place sometime around the mid of the year 2015. After about six to seven months of the marriage, the accused demanded a motor cycle to be given to him by the father of the deceased and as said demand was not met, it is said that the accused started ill-treating and treating the deceased. When such ill-treatment and torture was continuing, on 05.12.2016 in the afternoon, the accused having returned from his work place, assaulted the deceased by means of one Amari stick and gave slaps and thereafter, having sprinkled kerosene upon her body set her ablaze. Due to such incident, the deceased sustained burn injuries all over her body and thereafter the villagers having come to know about the same, gathered and sent the deceased in a Ambulance to the District Headquarter Hospital (DHQ), at Keonjhar where in course of treatment, she died on the next day.

3. On 06.12.2016 around 1.15 a.m. the father of the deceased (P.W.1) lodged a written report before the Assistant Sub-Inspector of Police (A.S.I.-P.W.17) who was then present at Baria Police Station. In the absence of Officer-in-Charge (O.I.C.), said A.S.I. immediately registered the case and took up investigation. He then examined the Informant (P.W.1) and deputed a constable to guard the dead body. He, thereafter proceed to the house of the accused where the accused and the deceased were residing as husband and wife. In presence of witnesses, he prepared the spot map (Ext.9). Few villagers present there were also examined. From the spot, he seized half burnt wearing apparels of the deceased and one thin mattress (Kantha) and prepared the seizure list. He then having searched for the accused did not find him. Thereafter, departing from that place, he went to the DHQ Hospital, Keonjhar where he requisitioned the service of the Executive Magistrate for holding inquest over the dead body of the deceased and held the same in presence of the Executive Magistrate and other witnesses and prepared the inquest report (Ext.4). He examined some other witnesses and then issued requisition for holding the Post Mortem Examination over the dead body of Rashmirekha (deceased). The accused was not present and, therefore, he engaged spies to get information regarding the whereabouts. On 07.12.2016 receiving reliable information as to the whereabouts of the accused, he conducted raid in the house of the accused and finding him to be present there, apprehended him. He then recorded his statement and it is said that the accused while in police custody besides having confessed to have killed his wife (deceased) by pouring kerosene and setting her ablaze, further stated to have kept that plastic chocolate jar in which kerosene had been stored and poured over the deceased and the Amari stick which he had used for assaulting the deceased and thus leading P.W.17 and other witnesses to the place where those had been kept by him, he gave recovery of the same from inside the bamboo bush located in front of his house, which were then seized. The accused then was medically examined and was forwarded in custody to the court.

On 11.12.2016, P.W.17 handed over the investigation of the case to the O.I.C. of

the Police Station (P.W.18) and he on completion of the investigation submitted the Final Form placing the accused to face the trial for commission of offences under section 498-A/302/304-B, I.P.C. and section 4 of the D.P. Act.

4. Learned S.D.J.M., Champua, having received the Final Form as above took cognizance of the said offences and after observing the formalities committed the case to the Court of Sessions for trial. That is how the trial commenced by framing the charges for the said offences against the accused.

5. The prosecution, in course of trial, has examined in total eighteen (18) witnesses, who are P.W.1 to P.W.18. Out of them P.W.1 is the Informant and father of the deceased whereas P.W.2 and 9 are two uncles of the P.W.1 and P.W.8 is the elder brother of P.W.1. The Doctor who had held the Post Mortem Examination over the dead body of the deceased is P.W.15 and P.W.17 and 18 are the two Investigating Officers (I.Os.). The other witnesses are the co-villagers of the accused.

Besides leading the evidence by examining the above witnesses, the prosecution has proved several documents which have been admitted in evidence and marked Exts.1 to 10. The written report lodged by P.W.1 with P.W.17 which had been treated as First Information Report (F.I.R.) is Ext.1 and the statement of the accused is Ext.2. The inquest report and post mortem examination report have been marked as Exts.4 and 7 respectively. The spot map is Ext.9 and the report of the Chemical Examiner is Ext.10.

6. The defence case is that of denial. The accused in his statement, recorded under section 313 of the Cr.P.C. has taken a plea that he being absent at the relevant time of the incident was ignorant about the fact as to how the deceased received those burn injuries on her person and he having got the information arrived at the spot and taken the deceased to the DHQ Hospital at Keonjhar for treatment. The accused has, however, not tendered any evidence in support of his defence.

7. The Trial Court upon examination of the evidence let in by the prosecution and scrutinizing the same at its level has arrived at a finding that the death of the deceased had taken place on account of the complications arising from severe burn injuries which she had received. The Trial Court then has found the accused guilty for commission of offences under sections 498-A/304-B, I.P.C. as well as section 4 of the D.P. Act. Accordingly, the accused has been sentenced as afore-stated.

8. Learned counsel for the Appellant (accused) submitted that there is no direct evidence to connect the accused with the said incident in which the deceased received the burn injuries on her person which has led to her death on the next day. He submitted that the prosecution mainly relies upon the evidence of P.W.1,2 and 8 to fasten the guilt upon the accused. It is submitted that the Trial Court while considering the evidence of P.W.1,2 and 8 has completely ignored the evidence of P.W.11 which has not been shaken in any manner and which

completely belies the version of P.W.1,2 and 8. In support of the same, he has taken us through the depositions of P.W.1,2,8 and 11 in great detail. He submitted that when P.W.11 has said that P.W.1 arrived at the DHQ Hospital at Keonjhar after the death of the deceased and as P.w.2 and 8 say that they had gone with P.W.1 to the hospital; the evidence of P.W.1,2 and 8 that the deceased had disclosed before them about the incident in attributing the accused to have doused the deceased with kerosene and set her ablaze ought not to have been believed. According to him, on just and proper appreciation of the evidence on the above witnesses; the Trial Court ought not to have held P.W.1,2 and 8 to be trustworthy witnesses. He submitted that they have stated so in their anxiety to see that the accused is put behind the bar as the evidence on record reveal that they were not happy in the marriage between the accused and the deceased and it was not with their prior consent but was solemnized after the accused and deceased left their houses without informing anyone and as they insisted for their marriage. He further submitted that the Trial Court simply on the basis of the evidence of P.W.1,2 and 8 who are highly interested witnesses and had the axe to grind against the accused as they had no consent to the marriage between the accused the deceased ought not to have held that the deceased was being tortured by the accused and ill-treated for nonfulfillment of his demand of being supplied with a motor cycle by P.W.1. In view of all these above, he urged that the judgment of conviction and order of sentence impugned in this Appeal are liable to be set aside.

9. Learned Additional Government Advocate for the Respondent submitted all in favour of the finding of guilt of the accused as has been recorded by the Trial Court. According to him, the death of the deceased having not taken place under normal circumstance but on account of receiving the burn injuries while in the house of the accused which is well within a period of less than a year of her marriage, on the face of the evidence of P.W.1,2 and 8 that the accused was ill-treating and torturing the deceased for nonfulfillment of the demand of Motor Cycle advanced from his side, the Trial Court has rightly convicted the accused for commission of the offence under section 498-A/304-B of the I.P.C. and section 4 of the D.P. Act since the presumption under section 113-B of the Evidence Act having come into play, the accused has miserably failed to discharge the same. He further submitted that the consistent evidence of P.W.1,2 and 8 that they having met the deceased in the hospital, the deceased had disclosed before them that it was the accused, who had sprinkled kerosene upon her and set her ablaze after assaulting her by means of Amari Stick and giving slaps and they having stated that there was demand of Motor Cycle from the side of the accused which being not been given was the reason for the accused to ill-treat the deceased, the accused has been rightly convicted by the Trial Court for the above offences.

10. Keeping in view the submissions made, We have carefully read the impugned judgment of conviction. We have also extensively travelled through the depositions of the witnesses (P.W.1 to 18) examined from the side of the

prosecution and have perused the documents admitted in evidence and marked Ext.1 to Ext.10 from the side of the prosecution..

11. The facts which are not in dispute are that the marriage between the deceased and the accused had taken place sometime in the mid of the year 2016 and thereafter, both were residing as husband and wife in the house situated in the village Baria and that the deceased received burn injuries all over her body on 05.12.2016 and has died in course of treatment in the District Headquarter Hospital, Keonjhar on 06.12.2016.

It is also not disputed that when the marriage between the deceased and the accused took place, the deceased was reading in Class-X and her age was then around 18 years whereas the accused was either of the same age or little more.

The father of the deceased, who has been examined as P.W.1 has stated that after 6 to 7 months of marriage, the accused demanded a Motor Cycle to be given by him and such demand was conveyed to him by his daughter (deceased). He further states that when he visited the house of his daughter, she had told him about such demand being made by accused and then he says to have expressed his inability to fulfil the same on account of poverty. His further evidence is that the accused thereafter started ill-treating the deceased. P.W.2 who is the uncle of P.W.1 is not stating anything about the demand and torture upon the deceased. It is the evidence of P.W.1 and 2 that when the deceased was reading in Class-X, the accused forcibly took her and thereafter, the matter was settled and marriage between them was performed. It is also seen from the evidence of P.W.8 who is the elder brother of P.W.1 that after the accused took the deceased with him as they were in love with each other; the marriage between the two was performed. He is not stating anything about the demand. P.W.9 the nephew of P.W.1 has, however, stated that after the marriage when he had visited the house of the deceased and she used to tell him that the accused was assaulting her after drinking liquor and torturing her. He does not state anything about the demand of Motor Cycle by the nephew. The above being the evidence coming from the lips of P.W.1,2,8 and 9, we find that in the F.I.R., P.W.1 has stated nothing about such demand and torture. Thus, we find that the evidence of P.W.1 as tendered during the trial is an improvement from his version in the F.I.R. (Ext.1) when such an important fact that there was demand of Motor Cycle by the accused and for non-fulfilment of the said demand, the accused was torturing the deceased and ill-treating her being not even hinted in the F.I.R. (Ext.1), his version in Court on that score without any corroboration from his own relations, such as, P.W.2 and P.W.9 who are his two uncles and P.W.8 who is his brother is unsuited to be acted upon. So the case of the prosecution that there was demand of a Motor Cycle from the side of the accused and for non-delivery of the same, the accused was torturing and ill-treating the deceased is found to have not been proved beyond reasonable doubt through clear, cogent and acceptable evidence. In that view of the matter, one of the essential foundational facts for attracting the offence punishable under section 304-B of the I.P.C. goes

unestablished and simply for the reason that the deceased has met her death not under normal circumstance within a period of seven years of marriage, the presumption available under section 113-B of the Evidence Act does not come into play against the accused placing him under the legal obligation to dislodge the same either by bringing the materials in his favour from the witnesses examined from the side of the prosecution or by leading evidence in that regard.

Having said as above, for further analysis of evidence on record, let us again advert to the evidence of P.W.1. He has stated that on the date of the incident, the accused after returning from the work place assaulted the deceased by means of an Amari Stick, poured kerosene and set her ablaze. It is his evidence that all these facts came to his knowledge being so told by the inhabitants. He is neither naming any of those inhabitants nor the prosecution has examined any one of them in order to establish the said fact as to the happening of the incident and the role played by the accused therein. His further evidence is that when he went to the hospital, he saw his daughter lying with burn injuries and she disclosed that the accused poured kerosene and set her to fire. He then states to have reported the matter to the Police in writing which had been treated as F.I.R. and has been admitted in evidence and marked Ext.1. Thus if we read his evidence, it is coming out that the Ext.1 that he lodged is after the death of his daughter when he specifically states that her daughter died on the same day and so he reported the matter to the police. Now the F.I.R. (Ext.1) being perused, there appears total omission of the fact that the deceased had stated before P.W.1 that it was the accused who had poured kerosene upon her body and set her ablaze. The F.I.R. version is omnibus that his daughter was set to fire being doused with kerosene. It, however, reveals from the F.I.R. as if by the time P.W.1 lodged the same, he had only the information by hearing from others that his daughter had been taken to DHQ Hospital, Keonjhar and he had not been informed by anyone from the family of the accused about the said fact. This report has been received at the Police Station at 2.15 p.m. on 06.12.2016. The I.O. who has received the said written report is stating that he registered the case on receiving the said written report and then deputed a Constable to guard the dead body in the hospital and went to the house of the accused which he states to be the spot and prepared a spot map there. The spot map (Ext.9) reveals that the Informant (P.W.1) was very much present at that time when it was prepared by P.W.17 and that the house was identified by the P.W.1. So, it is wholly unacceptable that the F.I.R. (Ext.1) had been lodged by the P.W.1 before the death of the deceased and rather it leads to show that it was after the death of the deceased. That being so, we find no such averment in the said F.I.R. as to the Informant (P.W.1) by then had met the deceased in the hospital where the deceased was lying with burn injuries and then the deceased to have told him as to how she received the burn injuries on her person and that the accused was responsible for that as he having sprinkled kerosene upon her body had set her ablaze. This being the state of affair, in the evidence of P.W.1 as to approach the evidence of P.W.2, we find him to have said to have gone with P.W.1 to

the hospital and there had been told by the deceased about the happenings including the role played by the accused, the same cannot be believed for a moment more so when he is not stating as to whether before going to the hospital, P.W.1 lodged the F.I.R. or it was thereafter. P.W.9 is again stating that when he went to the hospital, he found the deceased with 80% of burn injuries and P.W.1 then having reported the matter, the Police arrived and held inquest over the dead body. It is also seen that the F.I.R. being lodged; the Police came to hold inquest over the dead body and thus the F.I.R. is after the death. If that is so, the omission to state about the complicity of the accused is certainly a material contradiction which renders the evidence of P.W.1 unreliable.

It is true that the incident has taken place in the house of the accused. But then we find no evidence that the accused was present in the house at the relevant time and taking into account the age of the accused when it was during the day time, his absence in the house at the relevant time, as has been stated by him, in his statement under section 313, Cr.P.C. cannot be said to be wholly improbable.

The confession statement of the accused as has been recorded by P.W.17, which has been exhibited as Ext.2 is inadmissible in the evidence in view of the clear bar contained in section 25 of the Evidence Act. That being so, when P.W.17 says that the accused having led him and other witnesses had given recovery of the plastic jar emitting the smell of kerosene and one Amari Stick from inside the bamboo bush in front of his house, the same is found to be receiving any corroboration from independent sources. The witnesses in support of the same having been examined by the prosecution are completely silent with regard to the legal requirements for admissibility of that fact discovered. They simply state about such seizure of those articles. They also do not state that where such statement was given by the accused. We are, therefore, of the considered view that the prosecution has failed to establish the charges against the accused beyond reasonable doubt.

12. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 03.07.2018 passed by the learned Additional Sessions Judge, Champua, in Sessions Trial No.27 of 2017 are hereby set aside.

The Appellant (accused), namely, Prasanta Dandia @ Kaira be set at liberty forthwith, if his detention is not required in connection with any other case.

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