

(2012) 07 JH CK 0022

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 497 of 2003 and Acquittal Appeal (D.B.) No. 29 of 2003

Rabindra Mahto alias Rabindra Nath Mahto, Kanaklata Mahto, Hemlata Mahto and Laxmikant Mahto APPELLANT

Vs

The State of Jharkhand
 State of Jharkhand Vs Raj Kishore Mahto, Kanaklata Mahto, Hemlata Mahto and Laxmikant Mahto RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 161, 302, 304B, 498A

Citation : (2012) 07 JH CK 0022

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : P.C. Tripathy and Jagannath Mahto in Criminal Appeal D.B. No. 497 of 2003 and Mr. Ravi Prakash, APP in Acquittal Appeal D.B. No. 29 of 2003, for the Appellant; Ravi Prakash, Additional Public Prosecutor and M/s. H.K. Mahto and Akshay Kr. Mahto, Advocate for the Informant in Criminal Appeal (D.B.) No. 497 of 2003 and M/s. P.C. Tripathy and Jagannath Mahto, Advocate in Acquittal Appeal (D.B.) No. 29 of 2003, for the Respondent

Judgement

1. Criminal appeal no. 497 of 2003 has been filed against the judgment of conviction dated 12.03.2003 and order of sentence dated 13.03.2003 passed by the learned Sessions Judge, Seraikella-Kharsawan in Sessions Trial No. 85 of 2002 convicting the appellant no. 1-Rabindra Mahto u/s 302 of I.P.C. and sentencing him to undergo R.I. for life and convicting the appellant nos. 2, 3 & 4 under 498 A of I.P.C. and sentencing them to undergo R.I. for one year. The sentences awarded to appellant no. 1 were directed to run concurrently.

The appellants have been acquitted from the charges under Sections 120-B and 304-B of I.P.C.

Acquittal appeal (D.B.) no. 29 of 2003 has been filed on behalf of the State against the same judgment.

2. The prosecution case in short is that Yamuna Mahto (deceased) gave a fard beyan before police on 22.12.2001 at about 9:15 A.M. in the burn ward of the hospital to the effect that she was married with appellant no. 1-Rabindra Mahto on 27.4.2001. For about a week or so everything was alright. Thereafter, her mother-in-law (A2-Kanaklata Mahto), father-in-law (Raj Kishore Mahto), husband (A1-Rabindra Mahto) and sister-in-law (A4-Laxmikant Mahto) started bearing her on trivial matters. Her father-in-law and mother-in-law and other family members used to taunt her for not bringing Gas and Burner in the marriage. At about 5:00 in the morning, when she was preparing breakfast in the kitchen for her father-in-law who was going on duty, her husband Rabindra Mahto came from behind and suppressed her mouth and poured kerosene oil on her and set her on fire by match. She started crying. Her mother-in-law and father-in-law came there, but they did not try to save her. She does not know how she was brought to hospital. Prior to alleged occurrence her Nanad (A4) assaulted her. Few days earlier her husband (A1) cut her hands by blade. All the people tortured her. When her parents came, she told them about their demands and - beating by them. The appellants had burnt her badly. Due to burns in hand, she was not in a position to write her name. Earlier also there was case between the parties.

3. The informant Yamuna died on 27.12.2001 in hospital during treatment due to septicaemia on account of burn injuries. The said fard beyan was treated as dying declaration.

4. P.W. 1 and 2 are the neighbours of the informant and P.W. 3 is her brother, P.W. 4 is her father, P.W. 5 is her mother, P.W. 6 is the doctor in whose presence the alleged dying declaration was recorded, P.W. 7 is the doctor who conducted post mortem, P.W. 8 is the police officer who recorded the said dying declaration, P.W. 9 is the investigation officer.

5. First of all we take up the Acquittal Appeal (D.B.) No. 29 of 2003. State counsel contended that all the ingredients for conviction u/s 304-B of I.P.C. are present in this case, and therefore, the appellants could not be acquitted for that offence.

6. In our opinion, the learned trial court rightly acquitted the accused persons u/s 304-B of I.P.C. All the ingredients for such offence are not made out in this case. Exhibit 1 is signature of Yamuna Mahto-informant on her written complaint made to the police on 5.12.2001. This document is admitted document of the prosecution. She inter-alia alleged that after her marriage, the appellants used to harass her. On 4.12.2001 due to domestic reasons her Nanad (A3) assaulted her by "Belan" and abused her to which when she protested, the husband of A3 and her husband-A1 assaulted her with "Danta" and A1 cut her left hand with blade. Due to fear, she went in the house of P.W. 2 who happens to be her Mama and then she came to the police station along with her father P.W. 4 and P.W. 2. The appellants threatened her that if she disclosed these things before anyone, dire consequences will follow.

On carefully going through this document it is very clear that there is no whisper of any kind of demand of dowry. For the same reason, it is not possible to believe the evidence of P.W. 1 to 5 about demand of dowry. Thereafter the present F.I.R. was lodged on 22.12.2001 alleging inter-alia demand of dowry. In our opinion, the story of demand of dowry is clear development in the case by the prosecution. Therefore, we are of the view that essential ingredients of demand of dowry is absolutely lacking in this case. We therefore find no merit in acquittal appeal.

7. So far as Criminal Appeal (DB) no. 497 of 2003 is concerned, counsel for the appellants did not press this appeal on behalf of A2 Kanaklata Mahto and A3 Hemlata Mahto as they have already served their sentences by remaining in jail for about 14 months out of sentences of 12 months u/s 498-A of I.P.C.

Accordingly, this appeal on behalf of Kanaklata and Hemlata Mahto is dismissed as not pressed.

8. So far as A4 Laxmikant Mahto is concerned, there is nothing on record against him to support his conviction u/s 498-A of I.P.C. Accordingly, he is acquitted from the charges.

9. So far as A1-Rabindra Mahto is concerned, in our opinion, it is not safe to uphold his conviction u/s 302 of I.P.C. As noticed above, there is nothing in the said letter dated 5.12.2001 to indicate any demand of dowry. However in the fard beyan and in the evidence of P.W. 1 to 5, the demand of dowry is developed to be the motive of alleged torture on the deceased. Moreover as per the F.I.R., Yamuna Mahto was set on fire in the kitchen. The I.O. inspected the place of occurrence on the same day i.e. on 22.12.2001. He found one tin dibiya without oil and a match box in the kitchen. In the bed room, he found pillow, rajai, toshak etc. in burnt condition. From the seizure list it appears that one burnt Chadar was found in the Aangan. The bed room and kitchen was at a distance of 10-15 yards and in between there was Aangan. There is nothing on record explaining the said position. Thus, it appears that the place of occurrence has not been clearly established. It further appears that the I.O. took re-statement of the deceased u/s 161 of Cr.P.C. during investigation. Thus, there was no difficulty for him to get her statement recorded by the Magistrate which he did not care to do. Furthermore, the doctor-P.W. 7 in his evidence said in paragraph 8 that the percentage of burn was 100% and usually the affected person goes in unconsciousness after receiving such injury.

10. Taking into consideration, the entire materials on record in totality, in our opinion, the prosecution has not proved the charges against A1 u/s 302 of I.P.C. beyond reasonable doubt. Accordingly, he is acquitted from the charges u/s 302 of I.P.C. However, his conviction u/s 498-A of I.P.C. is maintained. He has remained in jail for about 11 years, which is much more than the sentence awarded to him u/s 498-A of I.P.C. In the result, the Acquittal Appeal (D.B.) no. 29 of 2003 is dismissed and Criminal Appeal (D.B.) no. 497 of 2003 is allowed to

the extent indicated above. Appellant no. 1-Rabindra Mahto @ Rabindra Nath Mahto is directed to be released, if not wanted in any other criminal case.