
(2009) 08 JH CK 0013
In the Jharkhand High Court
Case No : Criminal Revision No. 956 of 2007

Rajendra Rai

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 319
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 323, 498A

Citation : (2009) 08 JH CK 0013

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : R.S. Majumdar, for the Appellant; B.M. Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—This Cr. Revision application is directed against the order impugned dated 24.8.2007 passed by the Additional Sessions Judge, FTC. IV, Bokaro in S.T. No. 363 of 2005 by which the petition filed on behalf of the prosecution u/s 319 of Cr.P.C. was rejected.

2. The petitioner-complainant had lodged Complaint Case No. 62 of 2000 against the accused person including the opposite parties No. 3 to 5 herein for the alleged offence under Sections 323/498A/304B of the Indian Penal Code as also under Sections 3/4 of the Dowry Prohibition Act. The complaint was sent to the police station by the order of the Chief judicial Magistrate, Bokaro and accordingly, Bokaro Steel City P.S. Case No. 67 of 2005 was registered u/s 156(3) Cr. P.C. and the police after investigation submitted charge sheet for the alleged offence under Sections 498A and 304B of the Indian Penal Code only against the husband of the deceased Suresh Kumar Yadav whereas the members of the opposite party No. 3 to 5 were not sent up for trial. The informant-complainant i.e. the petitioner herein did not file any protest petition before the CJM against the charge sheet by which the O.P. Nos. 3 to 5 were not sent up for

trial. The accused Suresh Kumar Yadav was put on trial for the charge under Sections 498A/304B of the Indian Penal Code and in course of trial the prosecution preferred an application u/s 319 of Cr.P.C. stating therein that all the prosecution witnesses produced and adduced on behalf of the prosecution had alleged the complicity of the members of the opposite party Nos. 3 to 5 in perpetrating torture and causing dowry death of the deceased in furtherance of common intention. The learned Counsel further pointed out that the O.P. No. 3 and 5 are the elder brother and wife of the elder brother of the husband of the deceased respectively, whereas O.P. No. 4 is the younger brother of the husband. The prosecution witnesses were consistent that the O.P. No. 5 Fulwanti Devi poured kerosene oil on the body of the deceased whereas the husband accused lit match stick and inflamed her body. The other two viz. O.P. Nos. 3 and 4, who were standing there, did not prevent Suresh Kumar Yadav and Fulwanti Devi from litting the body of Mamta Kumari on fire and thereby, actively participated in commission of such offence. P.W.1 Ohm Prakash Yadav, P.W.2 Nagendra Pd. Yadav P.W.3 Dhanesh Kumar Prasad P.W.4 Rekha Devi and P.W.5 Barheshwar Prasad were consistent in their testimony with respect to alleged complicity of opposite parties Nos 3 to 5 as such the trial court should have allowed them to be arrayed as accused to stand charge for the offence under Sections 498A and 304B of the Indian Penal Code. The learned Counsel Mr. Majumdar pointed out that the principal accused Suresh Kumar Yadav has been convicted (sic) for the alleged charge and accordingly sentenced for imprisonment.

3. Mr. B.M. Tripathy, learned Sr. Counsel appearing on behalf of the opposite party Nos. 3 to 5 strongly opposed the contention and submitted that the learned trial judge after meticulously examining the materials on the record including the statements of the witnesses came to a finding that the prosecution failed to make out a prima facie case for impleadment of the opposite party Nos. 3 to 5 as accused in the instant case. The learned trial judge relied upon the station diary entry No. 772 dated 28.1.2005 which contains the statement of the husband of the deceased Suresh Kumar Yadav before the police wherein he narrated that on 26.1.2005 when his wife Mamta Kumari (since deceased) was preparing tea in the kitchen, her Shari all of a sudden caught fire which inflamed her entire body. She was removed to Bokaro general hospital with 100% burn injuries where she died in course of treatment on 27.1.2005. Mr. Tripathi pointed out that the statement of the husband was made in presence of the informant-petitioner who had also put his signature by affirming the statement of Suresh Kumar Yadav as to under what circumstances she sustained fire. The trial judge also observed that the name of the other accused persons viz opposite parties No. 3 to 5 (Janardan Yadav, Anardan Yadav and Fulwanti Devi) did not find mention in the station diary entry about their complicity in any manner and that Mamta Kumari (since deceased) in her letter addressed to her father in the year 2001, that has been brought on the record pointed her allegation mainly against her husband Suresh Kumar Yadav of perpetrating torture except that the opposite party No. 3 Janardan Yadav used to abuse her in filthy language. The prosecution witnesses

who have been referred to by the learned Counsel for the petitioner hereinbefore were admittedly not the eye witnesses and that they were silent as to from whom they derived information who narrated them chain of circumstances by which Mamta Kumari sustained burn injuries which caused fatal to her in course of treatment.

4. Having regard to the facts and circumstances of the present Cr. Revision and the grounds set forth assailing the order impugned dated 24.8.2007 passed by the trial Judge, I find it relevant to mention that the occurrence as alleged took place on 26.1.2005 and daughter of the complainant Mamta Kumari died at Bokaro general hospital on 27.1.2005, nevertheless, the complainant (informant-petitioner) testified that he had put his signature on the statement of his son-in-law Suresh Kumar Yadav in presence of the Police Officer and the Doctor attending the patient deceased and therefore he cannot back out from his signature alleging that his signature was obtained on a blank paper expressing his agreement with the statement of Suresh Kumar Yadav. The complainant is equally silent as to what prevented him to institute an independent case before the concerned police station if dowry death was committed to her daughter by the accused persons but instead, he filed a complaint petition after inordinate and unexplained delay on 5.2.2005. The F.I.R. was instituted by the order of the CJM Bokaro on 11.2.2005 giving rise to B.S. City P.S. case No 67 of 2005. The explanation that was accorded in the complaint petition by the petitioner-informant (complainant) was contrary to his statement before the trial court. Therefore, on the fact as well, I do not find merit in this Cr. Revision and it can safely be observed that the petitioner failed to make out a prima facie case to array the opposite parties Nos. 3 to 5 (Janardan Yadav, Anardan Yadav and Fulwanti Devi) as accused in S.T. No. 363 of 2005 on the statements of P.W.1, P.W.2, P.W.3, P.W.4, and P.W.5 for the reasons that they were not the eye witnesses, nor they disclosed as to from whom any of them derived information as to the circumstances and complicity of O.P. No. 3, 4 and 5 herein in the dowry death of Mamta Kumari. The trial has been concluded and disposed of by convicting the husband Suresh Kumar Yadav for the alleged charge and has been adequately sentenced. Yet, it is observed that had there been merit in this criminal revision, there was no impediment in allowing the O.P. Nos. 3 to 5 to be arrayed as accused even after disposal of Sessions Trial No. 363 of 2005. In the given facts and circumstances, I do not find merit, thus this Criminal Revision is dismissed.