
(2010) 04 JH CK 0082
In the Jharkhand High Court

Sahdeo Modi, Omprakash Modi and Kalawati Modi	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304B

Citation : (2010) 4 JLJR 544

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 9.11.2002 and 12.11.2002 passed by Additional Sessions Judge, F.T.C.-II, Hazaribagh in S.T. No. 317 of 1996 whereby and whereunder appellants were convicted u/s 304B of the I.P.C. It further appears that appellant nos. 1 and 3 have been sentenced to undergo R.I., for 8 years whereas appellant No. 2 has been sentenced to undergo R.I., for 10 years for the aforesaid offence.

2. The case of prosecution in short as per the fard beyan of P.W. 2 is that the deceased (informant's daughter) married to appellant No. 2 one years before the occurrence. It is stated that after six months of the marriage, the appellants demanded Rs. 10,000/- as dowry. It is stated that deceased came to her parental house and disclosed about the demand. It is stated that deceased also disclosed that appellants tortured her for demand of dowry. It is further alleged that appellant No. 1 came to the house of informant after three days of the arrival of deceased and when informant told him that he cannot meet the demand of dowry, appellant No. 1 returned. It is then alleged that on 21.6.1995 an unknown person disclosed that his daughter Sarswati Devi hospitalized for treatment of burn injury. Whereupon he went to the hospital and found that his daughter Sarswati Devi was lying dead in the hospital.

3. On the basis of aforesaid information, police instituted Chouparan (Chandwara) P.S. Case No. 75 of 1995 u/s 304B of the IPC and took up investigation. After completing the investigation, police submitted charge sheet against the appellants u/s 304B of the IPC. It appears that after cognizance, the case committed to the court of sessions as the offence u/s 304B of the IPC is exclusively triable by the court of Sessions.

4. The learned court below framed and explained charges to the appellants to which they pleaded not guilty and claimed to be tried. Thereafter prosecution examined altogether seven witnesses and brought on record some documentary evidence, in support of its case. Then appellants examined u/s 313 of the Cr.P.C. in which their defence is of total denial. It appears that the learned court below after considering the evidence available on record, convicted and sentenced the appellants as aforesaid against that the present appeal filed.

5. Sri Nitya Nand Sinha, learned Counsel for the appellants submits that in the instant case demand of dowry has not been proved. It is submitted that the informant made different statement at different stages with regard to the demand of dowry. It is further submitted that there is no direct evidence on record to show that the deceased was tortured and/or assaulted by the appellants for demand of dowry. It is submitted that the evidence adduced by the prosecution shows that the relation of deceased with the appellants is cordial and there is no dispute in between them. Under the said circumstance, it cannot be presumed that these appellants assaulted/tortured the deceased for demand of dowry. It is further submitted that prosecution witnesses, i.e. P.W. Nos. 3, 4, 5 and 6, stated that the deceased disclosed to them that she caught fire while she was cooking. It is submitted that the aforesaid four prosecution witnesses had not been declared hostile and their statement remain unchallenged. It is submitted that since the deceased died an accidental death, therefore, appellants cannot be convicted for the offence u/s 304B of the IPC. It is also submitted that the independent prosecution witnesses, who arrived at the place of occurrence just after hearing the hulla and/or cry of deceased, had specifically stated that at the time of occurrence, appellants were not present in the house. Thus, it is clear that the appellants have no hand in commission of present crime. It is lastly submitted that the informant who is father of deceased has admitted that he has filed an affidavit in the court of CJM stating therein that he has filed the case against the appellants on some confusion and later on he came to know that his daughter died herself, therefore, he did not want to pursue the case. It is submitted that the aforesaid admission of informant shows that the appellants were wrongly convicted and sentenced in the present case.

6. On the other hand, Sri. T.N. Verma, learned Additional P.P. appearing for the prosecution, submits that it is an admitted position that deceased died, within one year of her marriage, due to burn injury. It is then submitted that P.W. 1 and 2 stated that the deceased was tortured by the appellants for demand of dowry. Accordingly, it is submitted that all the ingredients of dowry death had been

proved by the prosecution, therefore, the learned court below rightly convicted and sentenced the appellants.

7. Having heard the submission, I have gone through the record of the case. In the instant case it is an admitted position that the deceased died due to burn injury. However from perusal of evidence of P.W. 3, 4 and 6, I find that they are resident of same village where the occurrence took place. Aforesaid witnesses stated that after hearing the cry of deceased, they went to her house and saw that she was burning. They put blanket and satchet on her body for putting off the fire. They further deposed that on being asked the deceased disclosed that her Sari caught fire while she was cooking. The aforesaid witnesses further stated that at the time of occurrence, the appellants were not present in the house. It is worth mentioning that the prosecution has not challenged the version of aforesaid prosecution witnesses. Under the said circumstance, I find that the prosecution admits that the deceased caught fire while she was cooking and at that time appellants were not present in the house.

8. In this connection, it is worth to be mentioned that after lodging of the FIR, informant filed an affidavit in the court of CJM, stating therein that earlier he has filed the case against the appellants on some confusion. However, later on he came to know that his daughter caught fire herself and died. Aforesaid affidavit exhibited in the instant case (Ext. 1/1), on being proved by informant (P.W. 2). Thus the informant admits that deceased died due to accident and caught fire while she was cooking.

9. It further appears that in the fard beyan the informant stated that appellants demanded Rs. 10,000/- as dowry and this fact was disclosed to him by deceased. He also stated that deceased further disclosed that she has been tortured for the aforesaid demand. However, P.W. 2 (informant) in court had stated that his son-in-law (appellant No. 2) had demanded Rs. 10,000/- and threatened that if demand will not be fulfilled, his daughter will be killed. Thus, it appears that the informant making different statement at different stages with regard to demand of dowry. Moreover the aforesaid statement of P.W. 2 is contradicted by P.W. 3, 4 and 6. These witnesses specifically stated in their deposition that there is no dispute between the appellants and deceased. I further find that appellant admits that aforesaid demand was made in presence of co-villager, namely, Laxman Modi, Basudeo Yadav, Ganesh Yadav and Kedar, but the said co-villagers have not come forward to support the aforesaid version of informant. Under the said circumstance, I find that the demand of Rs. 10,000/- by the appellants and torture of deceased for non fulfillment of the said demand have not been proved by the prosecution beyond the shadow of all reasonable doubt.

10. From perusal of evidence available on record, I find that the prosecution admits that the deceased died due to accident and as the demand of dowry as well as the alleged torture for non fulfillment of the said demand have not been proved beyond the shadow of all reasonable doubt, I am of the view that the

impugned judgment of conviction and order of sentence suffers from material illegality and/or irregularities, therefore, the same cannot be sustained in this appeal.

11. In the result, this appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. The appellants are acquitted from the charges against them. The appellants are on bail, they are discharged from the liability of their bail bonds.