

(2013) 11 PAT CK 0004

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 131 of 2002

Shubh Narain Mishra and Bhagyawati Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304B, 498A

Citation : (2013) 11 PAT CK 0004

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Prasoon Sinha, for the Appellant; C. Jawahar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant No. 1 has been convicted u/s 304B IPC and sentenced to RI for ten years as also u/s 498A and 201 IPC and sentenced to RI for three years and two years respectively and he has further been directed to pay a fine of Rs. 5,000/- in default of which further RI for one year. The Appellant No. 2 has also been convicted u/s 304B IPC but sentenced to RI for seven years and no separate sentence has been passed under Sections 201 and 498A IPC by the 1st Additional Sessions Judge, Sitamarhi in S. Tr. No. 317/95/5/01 by judgment and order dated 16.03.2002. The case of the Informant, P.W. 4, Shailendra Kumar Jha is that his sister was married to Appellant No. 2 in June, 1987 and killed by her in-laws on 27/28.02.1994 for reasons of non-fulfillment of dowry.

2. During trial the prosecution examined four witnesses out of whom P.W. 4, informant, Shailendra Kumar Jha and P.W. 6, Anup Lal Jha are the brother and father of the deceased respectively. P.W. 1, Nagendra Choudhary and P.W. 2, Dhrub Narain Jha who were co-villagers of the Appellant have been declared hostile. P.W. 3, Namonath Choudhary was tendered whereas P.W. 5, Jitendra Jha is a formal witness.

3. During trial the father of the deceased i.e. P.W. 6 stated in cross-examination that his daughter was not tortured by the in-laws during her stay in the matrimonial home.

4. The Prosecution has not brought on record any expert opinion with regard to the cause of death of the deceased.

5. The submission of the Appellant is that since the defence had examined some witnesses as also documents to show that the deceased was ailing and she had died on account of ailment they had discharged their duty that the death was not connected with demands of dowry. In absence of any positive evidence adduced on behalf of prosecution that the death was unnatural and connected to ends of dowry the prosecution case is not fit to be relied upon.

6. On going through the evidence of P.W. 4, the Informant, I find that during evidence he has supported the fact that his sister was married in the year 1987 with the Appellant whereas occurrence took place in the year 1994. It is difficult to believe that for such a long period of seven years there would be consistent demands of dowry and death would be caused on account of this non-fulfillment. Moreover, the father of the deceased having positively stated that his daughter had not been tortured for ends of dowry, the Prosecution case is not fit to be relied upon. Also, in absence of any positive evidence that the death was unnatural it would be unsafe to uphold the conviction of the Appellants. Hence, giving them benefit of doubt, the appeal is allowed and the order of conviction and sentence passed against the Appellant on 16.03.2002 by the 1st Additional Sessions Judge, Sitamarhi in S. Tr. No. 317/95/5/01 is set aside. The Appellants are discharged of the liability of their bail bonds.