
(2008) 01 OHC CK 0018
In the Orissa High Court
Case No : Crlrev No. 679 of 2007

Susanta Kumar Bisoi @ Tuna @ Susant Bisoi	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302, 304B, 498A

Citation : (2008) CLT 362 (Suppl CrI) : (2008) 1 OLR 155 Supp : (2008) OLR 362 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : R. Rath, D. Mitra and J. Dash, for the Appellant; S. Behera Addl. Govt. Advs., for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—This revision has been preferred against the order dated 08.05.2007 passed by the Addl. Sessions Judge (FTC), Balangir in Sessions Case No. 79-B/3 of 2005-07 framing charge against him under Sections 498-A/304-B/302 IPC read with Section 4 of the D.P. Act. The specific challenge of the Petitioner is against framing of charge u/s 302 IPC.

2. Brief facts of the case are that one Birendra Kumar Kama lodged an FIR on 06.04.2005 alleging therein that his sister Bijayalaxmi Kama married to one Susanta Kumar Bisoi (the Petitioner) and their marriage was solemnized on 17.01.2005 as per customs and after marriage she stayed at Balangir with her husband in their native place. As per demand of the Petitioner, the family members of the deceased had handed over dowry articles including gold ornaments and cash of Rs. 45,000/-. All on a sudden, the informant received a telephonic message on 23.03.2005 morning from the elder brother of the Petitioner about the illness of his sister. Thereafter, they went to Balangir and

there they gathered from the family members of the Petitioner that the deceased voluntarily poured kerosene on her body and set fire in her cloth. The deceased was shifted to the I.G.H. Hospital in the same night for treatment. On receipt of this information, Balangir Town P.S. Case No. 72 of 2005 was registered under Sections 498-A/307 IPC read with Section 4 of the D.P. Act. During the course of her treatment, as the deceased breathed her last, the case was turned to one under Sections 304-B/302 IPC. After closure of investigation, charge sheet was submitted under Sections 498-A/304-B/302 IPC read with Section 4 of the D.P. Act and on receipt of the same cognizance was taken, the case was committed to the Court of session which framed the charge, as already indicated, under the aforesaid sections.

3. Mr. Rath, learned Counsel for the Petitioner submitted that ingredients of Section 302 IPC are not made out on the face of the statements of the witnesses and other materials available on record. The dying declaration recorded on 28.03.2005, i.e., one month prior to the death of the deceased is not a dying declaration u/s 32 of the Indian Evidence Act. In the FIR, the informant stated that the deceased regained sense on 29.03.2005 but the Executive Magistrate has recorded her statement on 28.03.2005. Therefore, in the eye of law there is no dying declaration. Framing of charge u/s 302 IPC is an outcome of total non-application of mind.

4. Mr. Behera, learned Addl. Govt. Advocate, on the other hand contended that there is ample material against the Petitioner to frame charge u/s 302 IPC. Moreover, the dying declaration was recorded by the Executive Magistrate and statement of other witnesses are there with regard to mental and physical torture and demand of dowry. The statements of Rajalaxmi Kama, Gouri Kama and other witnesses coupled with the Forensic report and post mortem report are very clear in this regard. Therefore, the trial Court has rightly framed charge inter alia u/s 302 IPC, since all the ingredients of that section have been fulfilled.

5. Perused the impugned order and the Case Diary. It is the settled principle of law that if on the basis of materials on record the Court could form an opinion that the accused might have committed the offence, it could frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing charge the probative value of the material on record cannot be gone into. The material brought on record by the prosecution has to be accepted as true at this stage. Before framing a charge, the Court must apply its judicial mind to the materials placed on record and must be prima facie satisfied that commission of the offence by the accused was possible. Whether, in fact, the accused committed the offence can only be decided in the trial. In the instant case, there are materials against the Petitioner to frame charge u/s 302/304-B/498-A IPC read with Section 4 of the D.P. Act. Whether the dying declaration was recorded properly or whether the Court will accept the same are matters for consideration during trial. For all these reasons, this Court finds no infirmity in the impugned

order.

6. The revision is accordingly dismissed. It is, however, made clear that any observation made by this Court in the present revision shall not influence the trial Court in any manner while considering the merits of the matter. The trial Court is directed to conclude the trial of the aforesaid sessions case as expeditiously as possible, preferably within four months, since the accused-Petitioner is languishing in custody.