

(2009) 04 OHC CK 0081
In the Orissa High Court
Case No : CRLREV No. 435 of 2004

Umakanta Sarangi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 232
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 109, 302, 306, 34, 498A

Citation : (2009) CLT 1087 (Suppl Crl)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : P. Kar, A.K. Mohanty, G. Kar and M.R. Satapathy, for the Appellant;
P.K. Pattnaik, Addl Govt. Advocate, for the Respondent

Judgement

Pradip Mohanty, J.—This revision is directed against the order dated 01.07.2004 passed by the learned Adhoc Addl. Sessions Judge, Balasore in Sessions Trial No. 10/80 of 2003 framing charge against the Petitioners.

2. The brief facts of the case are that on 16.06.2002 on the basis of the F.I.R. lodged by the brother of deceased before Nilagiri Police station, P.S. case No. 81/2002 corresponding to G.R. Case No. 120 of 2002 was registered. After investigation, charge-sheet was submitted under Sections 306/498-A/34 I.P.C. and 4 of the D.P. Act. The learned S.D.J.M., Nilagiri took cognizance of the offence and committed the case to the Court of Session. Learned Adhoc Addl. Sessions Judge, however, framed charge under Sections 302/34 I.P.C. against Petitioner nos. 1 and 2 and under Sections 302/109 I.P.C. against Petitioner No. 3 for abetting the crime. In the alternative, he framed charge u/s 306 I.P.C. against all the Petitioners. Further charge u/s 498-A I.P.C. and Section 4 of the D.P. Act was framed against Petitioner nos. 1 and 2.

3. Learned counsel for the Petitioners submitted that learned S.D.J.M., Nilagiri took cognizance under Sections 306/498-A/34 I.P.C. and committed the case to

the Court of Session. But the trial Court framed charge under Sections 302/34 I.P.C. against Petitioner nos. 1 and 2 and u/s 302/109 I.P.C. against Petitioner No. 3; in alternative, u/s 306 I.P.C. against all the Petitioners, which is illegal and liable to be set aside. He further submitted that there is no material against the Petitioners u/s 302 I.P.C. and the doctor who had conducted autopsy has categorically opined that the deceased had committed suicide. He further submitted that in case of homicidal hanging, there would be presence of marks of resistance and violence on the body. But, in the instant case, nothing is there. While framing charge, learned Adhoc Addl. Sessions Judge has not applied his judicial mind. According to him, no ingredient of Section 302 I.P.C. has been made out against the Petitioners. Therefore the order framing charge u/s 302 and the alternative charge u/s 306 I.P.C. is illegal. Looking to the statements and post-mortem report, it appears to be a case of suicide. There is no question of abetment to commit the-crime and there is also no material u/s 306 I.P.C. In support of his contention, learned Counsel for the Petitioners relied upon a decision in the case of State of Karnataka Vs. L. Muniswamy and Others, .

4. Learned Additional Government Advocate vehemently contended that there is ample material against the Petitioners to frame charge u/s 302/34 I.P.C. against Petitioner nos. 1 and 2 and u/s 302/109 I.P.C. against Petitioner No. 3. There are also materials to frame the alternative charge u/s 306 I.P.C. against all the Petitioners. Therefore, no illegality has been committed by the trial Court framing charge under the above Sections. Petitioner No. 1 developed illicit relationship with Petitioner No. 3 Manorama Dash and on the protest of the deceased, she was assaulted. Petitioner No. 1 also demanded dowry of Rs. 2, 00, 000/-, but such demand could not be fulfilled. He further stated that the deceased gave a dying declaration with regard to throttling with her saree. He further submitted that report was called for from the Professor, S.C.B. Medical College and Hospital who opined that the death of the deceased was due to venous congestion and asphyxia resulting from hanging and the ligature mark is ante-mortem in nature. He also opined that there was typical ligature mark on the neck of the deceased and there were redish colour patches on the left breast and on the" neck of the deceased.

5. Learned counsel for the informant also supported the above fact and relied upon the decision in the case of Rajendra Kumar Nanda Vs. State of Orissa, .

6. Perused the record including the statements recorded u/s 161 Code of Criminal Procedure the post mortem report, the opinion of the Professor S.C.B. Medical College and Hospital and the decisions cited by the parties. In the instant case, the 161 Code of Criminal Procedure statements reveal that the crime was committed due to illicit relationship between Petitioner No. 1 and Petitioner No. 3. The deceased had died under suspicious circumstances and there was allegation against Petitioner No. 1 with regard to extra marital relationship. The brothers of the deceased also stated about the dying declaration. There are also enough materials against Petitioner No. 1 and 2. The facts of the present case

are similar to those of Rajendra Kumar Nanda v. State of Orissa (supra). Applying the said ratio, it cannot be said that the trial Court has committed any error by framing charge under the above Sections. Therefore, this Court is not inclined to interfere with the impugned order.

7. The revision petition is accordingly dismissed. However, this Court observed that if, after examination of all the prosecution witnesses, no material comes out against the Petitioners, it would be open for them to file an application u/s 232, Code of Criminal Procedure This Court also directs the trial Court to complete the trial within a period of four months from the date of receipt of the order.