Bishnu Yadav @ Bishundev Yadav @ Bishnudeo Yadav Vs State Of Bihar

Court: Patna High Court

Date of Decision: May 9, 2024

Acts Referred: Indian Penal Code, 1860 â€" Section 34, 302, 498A
Code Of Criminal Procedure, 1973 â€" Section 313
Evidence Act, 1872 â€" Section 101, 106

Hon'ble Judges: Ashutosh Kumar, J; Jitendra Kumar, J

Bench: Division Bench

Advocate: Praveen Kumar, Dilip Kumar Sinha

Final Decision: Allowed

Judgement

1. We have heard Mr. Praveen Kumar, the learned Advocate for the appellant/ Bishnu Yadav @ Bishundev Yadav @ Bishnudeo Yadav and Mr.

Dilip Kumar Sinha, the learned APP for the State.

2. The appellant has been convicted under Section 498-A and 302 of the Indian Penal Code vide judgment dated 29.06.2016 passed by the 4th

Additional and Sessions Judge, Banka in Sessions Trial No. 156 of 2015/ Trial No. 338 of 2016. By order passed on the same date i.e. on 29.06.2016,

the appellant has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer RI

for six months for the offence under Section 302 IPC. No separate sentence appears to have been passed under Section 498-A IPC. Despite this, the

Trial Court has directed that both the sentences shall run concurrently.

3. There appears to be some non-application of mind while sentencing the appellant.

4. The deceased/ Fulkumari Devi is alleged to have been killed at the hands of he appellant and his father who has absconded. The deceased was

married to the appellant about 17-18 years ago. Before that, she was married to the elder brother of the appellant. When the elder brother of the

appellant died, the deceased was married to the appellant. With her earlier marriage, the deceased had given birth to one daughter. Later, with her

marriage with the appellant, she gave birth to three children. The FIR has been lodged by Upendra Rana (PW-6) who is the father of the deceased.

He had lodged the written reported addressed to the Officer-in-charge of Banka Police Station on 14.02.2015 alleging that the appellant, after about

eight years of his marriage with the deceased, started demanding money from the deceased by way of dowry. Non-payment of such dowry resulted in

bad treatment to her. On 13.02.2015, the informant (PW-6) learnt that his daughter had been killed. At about 2 O'clock in the night intervening

between 13-14th of April 2015, his grandson/Raj Dixit (DW-1) informed him about the death. On such information, he went to the matrimonial home

of the deceased and saw her dead body which had several wounds on it.

5. On the basis of the afore-noted written report, a case vide Banka P.S. Case No. 87 of 2015 dated 14.02.2015 was registered for investigation under

Sections 498-A/302/34 IPC.

6. The police after investigation submitted charge-sheet against the appellant only. However, the Magistrate took cognizance against the appellant and

his father but the Trial of the appellant was separated because his father/ Anirudh Yadav absconded.

7. The Trial Court, after having examined eight witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

8. On behalf of the appellant, it has been submitted that only interested witnesses have been examined at the Trial. It has further been argued that it is

rather unusual that dowry would be demanded from a woman who had been married with the appellant for about 17-18 years and had many children

from the wedlock. That apart, the deceased was married to the elder brother of the appellant and it was only by family arrangement that the appellant

agreed to marry the deceased again, even though the deceased had given birth to a daughter from her earlier marriage with the elder brother of the

appellant. The entire family stayed under the same roof. Under such circumstances, the story of demand of dowry after so many years of marriage

does not appear to be probable. That apart, it has been argued, that there are some inconsistencies in the statement of the informant (PW-6) and the

medical testimony. According to the information received by PW-6, the deceased was assaulted which led to her death. The postmortem examination

revealed only one fatal injury on the vertex which had exposed the skull bone. Such injury could have been as a result of fall on a hard substance.

There was no immediate cause of any conflagration or fight. Thus, the argument on behalf of the appellant is that without there being any evidence

with respect to the charge under Section 498-A, the appellant has been held guilty under the charge though not punished for it.

9. For the offence of 302 to be proved, the prosecution has not done anything except examining PW-6 (the informant) and his own brothers. Out of

eight witnesses who have been examined at the Trial, two witnesses, viz., Bishundeo Yadav and Rajgir Yadav, PWs. 1 and 2 respectively have been

declared hostile as they have not supported the prosecution case. PWs. 3, 4 and 5 are brothers of PW-6 and uncles of the deceased. PW-7 is the

doctor and PW-8 is the Investigating Officer.

10. In this scenario, the learned Advocate for the appellant has submitted that because of the death of the deceased, the relationship between PW-6

and the family of the appellant got snapped and this false case was instituted.

11. It has further been argued that the son of the deceased ought to have been examined on behalf of the prosecution because he was the person who

had informed PW-6 about the death. When he was not chosen as a witness, he was brought to the witness-stand on behalf of the defence who clearly

stated before the Trial Court that he had informed his grandfather (PW-6) that his mother had suffered colic pain in the night and had then died.

12. Mr. Dilip Kumar Sinha, the learned APP, on the other hand, has submitted that if her death took place in her matrimonial home, it was expected

that there would not be many eye-witnesses to the occurrence. That also, when the offence is said to have taken place in the dead of the night inside

the four walls of the house. Merely because no independent persons or co-villagers have been examined, that does not render the prosecution case

worthy of outright rejection. No defence has been taken by the appellant and nothing has been done at his behest to explain the injury on the head/

occipital region of the deceased. Even if it were became of a fall and consequent death, it ought to have been stated by the appellant in his statement

under Section 313 of the Code of Criminal Procedure. The appellant has not stated anything which could be any reasonable explanation of the injuries

suffered by the deceased. Under such circumstances, there ought not to be any interference with the judgment of conviction and sentence.

13. We have examined the records of this case in some detail. What we have noticed is an almost tantological repetition of the accusation by the

informant and his three brothers. All of them have come out with the same story of having learnt about the death of the deceased and then having

proceeded to the matrimonial home of the deceased only to find her dead body. Such consistency with exact precision makes their averments slightly

doubtful, especially when no independent person or even a co-villager has been brought to the witness-stand to testify against the appellant.

14. Apart from this, we have also seen that there is only one fatal injury on the head of the deceased. The deceased is alleged to have been assaulted

brutally in the night. Then, there should have been other injuries on her person. The postmortem report clearly reveals that there were minor bruises on

the other parts of the body and only the injury on head was the cause of the death. That injury could have been caused by a fall as well as opined by

doctor Basant Kumar Singh(PW-8).

15. We have also noticed that the inquest was held which has been signed by Upendra Rana/informant. In the inquest also, there are no reference of

the injuries which would reflect that the deceased was assaulted for the purposes of killing her.

16. For an offence under Section 302 of the IPC to be proved, the prosecution is required to bring all the evidence on record. None of the witnesses,

including P.W. 6, claimed to have seen the occurrence. They have received information about the assault only through the mouth of Raj Dixit (D.W.

1), who had a different story to narrate before the Trial Court.

17. What is but surprising is that despite the entire family of the deceased living under the same roof, the last rites were performed by P.W. 6.

18. When was the dead-body taken to his home does not get reflected from the records of this case.

19. It further appears from the evidence on record that P.W. 6 had informed the police station and the police had arrived at the house of the appellant.

The relationship between the appellant and the informant as well as his brothers was quite cordial. However, the appellant did not visit the house of

P.W. 6 very often. P.W. 6 was a Mukhiya of his village panchayat, but according to him, the appellant never participated in any campaign for his

election as Mukhiya. These isolated facts though may not suggest anything crucial either for believing or discarding the prosecution version, but it

appears that with the death of the deceased and the relationship between the family having been snapped, a guess work was made by P.W. 6 and

others that the deceased was killed for non-payment of dowry.

20. With respect to the charge under Section 498-A of the IPC, though all the witnesses, viz., PWs. 3 to 6 have stated that after about eight years of

the marriage of the deceased with the appellant, demand of money for purchase of a motorcycle was put up, but if it were so, the matter should have

been reported. If the matter was not reported, atleast the informant would have asked somebody to intercede on his behalf.

21. No complaint from any quarter makes such allegation absolutely doubtful.

22. Even otherwise, the deceased had known the family from before. She was married to Ranjeet who is the elder brother of the appellant. While

remaining in the household as wife of Ranjeet, she would have known the ways of the family. Had there been any inkling about such behaviour of the

family, she would not have agreed for marrying the appellant, who was the younger brother of her husband. With the appellant also, the deceased

maintained very cordial relations. Their marital life was good.

23. In this background, it is difficult to accept that money would have been demanded for purchase of motorcycle. The parties were on visiting terms.

All the brothers of the informant have stated before the Trial Court that whenever they visited the house of the deceased, they were accorded very

good treatment.

24. The story of the demand of money for purchase of motorcycle therefore, had come up only after the deceased had died.

25. With the charge under Section 498-A of the IPC not having been proved beyond doubt, it was the duty of the prosecution to prove that the

deceased had died because of the assault perpetrated on her by the appellant and his father.

26. Even with the aid of Section 106 of the Indian Evidence Act, it would be a difficult proposition to bring home the charge of murder against the

appellant when nobody had seen any part of the assault or the occurrence.

27. Even at the risk of repetition, we say that the only source of information to all the witnesses was the defence witness, viz., the son of the

deceased, who did not support the prosecution case. Thus, at best, it could be a case of a circumstance that the death took place in the house of the

appellant. There could be a suspicion that appellant and his father had caused the murder but the primary principle of criminal law is that the accused

must be and not merely may be guilty.

28. We have given our anxious consideration to the complete non-explanation of the injury on the person of the deceased by the appellant. Would this

circumstance trigger the application of Section 106 of the Evidence Act, is the question which has engaged us for the moment.

29. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is

upon him.

30. The two illustrations to the Section further clarify the afore-noted principle.

31. When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving

that intention is upon him.

32. If a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is on him.

33. Section 106 of the Evidence Act enunciates that when any fact is especially with the knowledge of any person, the burden of proving that fact is

upon him. The word 'especially' means facts that are pre-eminently or exceptionally within the knowledge of the accused.

34. The ordinary rule that applies to criminal trials that the onus lies on the prosecution to prove the guilt of the accused, is not in anyway modified by

the rule of facts embodied in Section 106 of the Evidence Act.

35. Section 106 of the Indian Evidence Act is only an exception to Section 101. Section 101 lays down the general rule that in a criminal case, the

burden of proof is on the prosecution and Section 106 is certainly not intended to relieve the prosecution of that duty. The provision is designed to meet

certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are

Ã¢â‚¬Å“especially"" within the knowledge of the accused and which, he can prove without difficulty or inconvenience.

36. In Shambu Nath Mehra vs. State of Ajmer; AIR 1956 SC 404 and Nagendra Sah vs. State of Bihar; (2021) 10 SCC 725, the Supreme Court has

categorically held that Section 106 of the Evidence Act will apply to those cases where the prosecution had succeeded in establishing the facts from

which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. If

the accused fails to offer proper explanation about the existence of the said other facts, the Court can draw an appropriate inference.

37. It has also been held that when a case rests on circumstantial evidence and if the accused fails to offer a reasonable explanation in discharge of

burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances.

38. In a case of circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the

failure of the accused to discharge the burden under Section 106 of the Evidence Act will not be relevant at all. When the chain is not complete, the

falsity or absence of the defence is no ground to convict the accused.

39. The only circumstance shown in the present case is that the dead-body was found in the matrimonial home of the deceased. The deceased was

married 18 years ago. She was part of the family even from before. The source of information to P.W. 6 is the son of the deceased who does not

support the prosecution case. No person, who could be called independent by any standard or a co-villager, came forward. The witnesses are the

father and the uncles of the deceased. Two other persons, who could have been called independent, viz., P.Ws. 1 and 2 have been declared hostile.

40. There is no other circumstance which has been shown.

41. As has been noted by us, the charge under Section 498-A of the IPC could not be proved for the reason of such accusation coming for the first

time only after the death of the deceased.

42. We do recon that if an offence takes place inside the privacy of a house, then it would be extremely difficult for the prosecution to lead evidence

to establish the guilt of the accused, if the strict principle of the circumstantial evidence is insisted upon by the Courts.

43. However, something more than mere presumption is required. That the deceased died; that she had a head injury and that there was no reasonable

explanation, are the circumstances which have been taken note of by the Trial Court to come to the conclusion that the appellant is guilty of the

charge of murdering his wife.

44. The background facts have been completely ignored. The assault is said to have been made because of non-payment of money for purchase of

motorcycle. The timing of such demand assumes importance. The deceased had been married and was a part of the family for last two decades. Why

would anyone ask for dowry at such a later stage in life when the entire family had settled down with children, some of whom had grown up?

45. Apart from the members of the family there would have been others also who would have known about ill-treatment to the deceased or assault in

the night. The evidence reveals that the deceased was taken to hospital. The deceased actually had been found dead by P.W. 6. P.W. 6 in his

fardbeyan has only vaguely referred to his associates having visited the matrimonial home of the deceased. Ultimately, it turned out that only his

brothers had visited the matrimonial home of the deceased.

46. What has really caught our attention is the parrot like repetition of the witnesses regarding their having visited the matrimonial home and finding

the dead-body with wounds.

47. While narrating about the incident in the written report, P.W. 6 has stated that he saw the nails of the deceased having been taken off and

grievous wounds on all of her body. Nothing of these kind was found either in the inquest or in the postmortem examination.

48. Was the father of the deceased taking some advantage of the death of his daughter? Did he have any grudge against his son-in-law? We do not

know. The circumstances listed by the prosecution for proving the case are not sufficient.

49. Once the prosecution has failed to prove the case, there could not be any application of Section 106 of the Evidence Act only to fill in what the

prosecution has abandoned as part of its duty.

50. Taking a holistic view of the matter, we find that the story put forth by P.W. 6 about demand of dowry and consequent assault leading to death is

not reliable enough and cannot be accepted without a demur.

51. There is yet another aspect which has troubled us. The sentence was handed over to the appellant on the same day of the judgment. It does not

appear from the order of sentence that the appellant was fully heard over the issue. It is not a mere formality that an opportunity has to be given to an

accused to address the Court before he is handed out the sentence imposed upon him.

52. In the totality of the circumstances, we find that it was only the guess-work of P.W. 6 who prevailed upon his brothers to support the prosecution

case.

53. We still have our gnawing doubts as to why the deceased would be asked to bring money from her father when she was married in the household

for the second time and she had been a part of the house for the last two decades.

54. For the afore-noted reasons, we give benefit of doubt to the appellant and acquit him of the charge of murder.

55. The appeal stands allowed.

56. The appellant is in jail. He is directed to be released forthwith from jail, if not required or detained in any other case.

57. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

58. The records of this case be returned to the Trial Court forthwith.

59. Interlocutory application/s, if any, also stand disposed off accordingly.