

(2009) 04 JH CK 0001
Jharkhand High Court
Case No: None

Haroon Mian

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: April 5, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 113(A)
- Penal Code, 1860 (IPC) - Section 30, 306

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 07.10.2002 passed by Additional Sessions Judge, F.T.C.-III, Chatra in Sessions Case No. 561 of 1993 whereby and whereunder appellant was convicted u/s 306 of the I.P.C. and sentenced to undergo rigorous imprisonment for five years and also pay fine of Rs. 5,000/-.

2. The case of prosecution, in short, is that the informant's niece Sahana Khatoon was married to Haroon Mian (appellant) four years ago. It is further stated that after marriage, the informant's niece was always tortured by appellant, her mother-in-law-Tetri Khatoon and brother-in-law Jasmuddin Mian. It is alleged that accused persons were demanding motorcycle and cash money. It is further stated that on 29.08.1992 informant came to know that his niece died in village-Simaria, whereupon he went to Simaria along with his co-villagers and came to know that on the date of occurrence some quarrel took place in between informant's niece and her husband, brother-in-law and mother-in-law and because of that she fell in a well, died due to drowning.

3. On the basis of aforesaid fardbeyan, Simaria P.S. Case No. 104 of 1990 u/s 306 of the I.P.C. instituted and police took up investigation. After completing the investigation, police submitted charge-sheet against the appellant, Tetri Khatoon and one Jasmuddin Mian u/s 306 of the I.P.C. It appears that learned court below took cognizance of the offence and committed the case to the court of Sessions, as the offence u/s 306 of the I.P.C. is exclusively triable by the court of Sessions. The learned court below framed and explained charge to the appellant u/s 30 I.P.C. vide order dated 10.02.1994 to which appellant pleaded not guilty and claimed to be tried. Thereafter, prosecution examined altogether twenty one witnesses. After close of the case of the prosecution, the statements of accused persons recorded u/s 313 of the Cr.P.C. in which their defence is of total denial. Defence also examined three witnesses in support of their case. The co-accused Jasmuddin Mian, who was minor at the time of occurrence, has been acquitted by Juvenile Court. It appears that learned court below after considering the evidence available on record acquitted co-accused Tetri Khatoon, however appellant was convicted and sentenced as stated above, against that, the present appeal filed.

4. While assailing the judgment of the court below, learned Counsel for the appellant submitted that there is no evidence on record to show that the appellant abetted the deceased to commit suicide. There is absolutely no evidence on record to show that on the date of occurrence any altercation took place in between appellant and deceased. The demand of motorcycle has also not been proved by cogent evidence. It is further submitted that the mother of deceased specifically stated at paragraph No. 2 of her deposition that her daughter married in the year 1979. Under the said circumstance, it cannot be presumed that the appellant abetted Sahana Khatoon for committing suicide. It is further submitted that co-accused Jasmuddin Mian has been acquitted-by Juvenile Court vide judgment dated 11.02.1999 in G.R. Case No. 506 of 1992 corresponding to Trial No. 154 of 1999. It is further submitted that the impugned judgment suffers from material illegality, therefore, the same is liable to be set aside.

5. On the other hand, learned Additional P.P. submits that in the instant case, the father, mother, uncle and brother of deceased categorically stated that the appellant and Jasmuddin Mian were torturing the deceased and demanding motorcycle and cash. It is also stated that because of the aforesaid reason, the deceased committed suicide by jumping in a well.

6. Having heard the submissions, I have gone through the record of the case. Prosecution had examined altogether twenty one witnesses, out of them P.W.-1 Rahim Mian, P.W.-2 Hanif Mian, P.W.-4 Jalaluddin Mian, P.W.-14 Kamruddin Mian, P.W.-17 Md. Hasim, have been declared hostile as they have not supported the case of prosecution. P.W.-3 Md. Ekram, P.W.-5 Md. Yakub Ansari, P.W.-6 Md. Saffique, P.W.-7 Saibun Nisha, P.W.-8 Aziza Khatoon have been tendered from cross-examination as they have not stated anything in support of prosecution.

P.W.-9 is the doctor who held autopsy on the dead body of the deceased. He has given an opinion that the deceased died due to asphyxia as a result of drowning.

7. P.W.-10 Sarffuddin, had proved inquest report. P.W.-11 Azimuddin, P.W.-12 Mozim Mian (father of deceased Sahana Khatoon) P.W.-13 Abdul Gani informant, P.W.-19 Moneza Khatoon (mother of the deceased) and P.W.-20 Md. Salim Akhtar are witnesses of fact. They had stated that Sahana Khatoon was married with appellant. They further deposed that after one and half year of marriage appellant and co-accused started torturing Sahana Khatoon and demanded money and motorcycle. They have stated that on the date of occurrence, they received information that Sahana Khatoon died, thereafter uncle of deceased visited the house of the appellant. Thereafter present case lodged.

8. Thus, none of aforesaid witnesses stated that on the date of occurrence any quarrel took place between deceased (Sahana Khatoon) and appellant. There is no evidence on record to show that the appellant abetted the deceased for committing suicide. It is well settled that in order to convict an accused u/s 306 of the I.P.C., the prosecution is required to establish that the accused abetted and/or instigated the deceased for committing suicide. In the instant case, as noticed above, there is no such evidence in this respect.

9. It is further submitted by learned Additional P.P. that there is evidence on record to show that the deceased committed suicide within seven years of her marriage. There is also evidence on record to show that the appellant tortured the deceased for demand of dowry. Thus, as per Section 113(A) of Evidence Act, it can be presumed that the appellant abetted the deceased for committing suicide. Aforesaid submission of learned Additional P.P. cannot be accepted. Firstly there is no evidence to prove that the deceased has committed suicide. D.W. No. 2, specifically stated at paragraph No. 2 that when Sahana Khatoon was fetching water from the well, she suddenly fell into the well and died. There is absolutely no cross-examination to the aforesaid statement made by D.W.-2. It is worth mentioning that D.W.-2 is the maternal uncle of Sahana Khatoon. Thus, I find that there is positive evidence on record to show that Sahana Khatoon died due to accident. Thus, in the absence of any evidence on record, it cannot be held that Sahana Khatoon committed suicide. Even assuming that deceased committed suicide, then also Section 113(A) of the Evidence Act has no application. P.W.-19, the mother of deceased, had stated at paragraph No. 2 of her deposition that her daughter was married in the year 1979. It is an admitted position that the occurrence took place on 29.08.1992. Thus, it appears that the death took place after thirteen years of marriage. For application of Section 113(A) of the Evidence Act, it is essential that the suicide must have been committed within seven years from the date of marriage. Thus, the aforesaid contention raised by learned Additional P.P. cannot be sustained.

10. In view of discussions made above, I find that there is no evidence on record to show that the deceased Sahana Khatoon committed suicide and there is also no evidence on record to show that the appellant instigated abetted Sahana Khatoon for committing suicide. Thus, I find that the prosecution has failed to prove the charge levelled against the appellant. Accordingly, I find that the impugned judgment cannot be sustained in this appeal.

11. In the result, this appeal is allowed. The impugned judgment of the court below is set aside. The appellant is acquitted from the charges levelled against him. He is also discharged from the liabilities of the bail bond furnished by him.