(2002) 05 JH CK 0003

Jharkhand High Court

Case No: Criminal Appeal No. 10 of 1996 (R)

Lalmani Mahato	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision: May 17, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 498A

Citation: (2003) 1 DMC 462

Hon'ble Judges: Vishnudeo Narayan, J

Bench: Single Bench

Advocate: S.P. Roy, for the Appellant; Prem Prakash, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.
This appeal is directed by the sole appellant named above against the judgment and order dated 18.1.1996 passed by Sri Ram Nath Ram Mahto, 4th Addl. Sessions Judge, Dhanbad in Sessions Trial No. 78 of 1995 whereby the appellant was found guilty for the offence punishable u/s 498A, I.P.C. and convicted and sentenced to undergo R.I. for three years and to pay a fine of Rs. 1,500/- and in default to undergo R.I. for six months. However, the appellant was not found guilty for the offence under Sections 302, 328,1.P.C and under Sections 3 and 4 of Dowry Prohibition Act.

2. The prosecution case has arisen on the basis of the fardbeyan of P.W. 8, the informant, Shyamlal Mahto recorded by ASI Md. Aftab Khan of Baghmara P.S. on 12.6.1994 at 16.45 hours in the Central Hospital, Baghmara, District Dhanbad regarding the occurrence which is said to have taken place on 12.6.1.994 at village Khonathi, P.S. Baghmara, District Dhanbad.

3. The prosecution case in brief is that the informant got an information at about 16.00 hours on 12.6.1994 from one Teju Mahto that his daughter Bhukhali Devi has

died of poisoning in Baghmara Hospital and the informant in the company of his brother Sukoo Mahto came to Central Hospital, Baghmara where he found his daughter dead and where he learnt on enquiry that his son-in-law appellant Lalmani Mahato had fled away from the hospital leaving the dead body of his wife Bhukhali Devi aforesaid. It is alleged that the marriage of Bhukhali Devi deceased was solemnised with appellant about 10 years ago and since then the appellant was treating the deceased Bhukhali Devi with cruelty by various means for the fulfilment of the demand of dowry and the deceased aforesaid had earlier filed a case in respect thereof against the appellant in the year 1990 which was later on compromised and the deceased started leading conjugal life with appellant in his house. It is alleged that even thereafter the appellant used to treat the deceased with cruelty by various means and also used to assault her and the deceased used to come to her parents'' house. It is alleged that the deceased had two sons and a daughter born of the appellant. The prosecution case further is that the appellant always used to demand money from the informant who was unable to fulfil the demand and the appellant always used to subject the deceased with cruelty. It is alleged that the appellant has administered poison on 12.6.1994 to the deceased as a result of which she has died. Thereafter the appellant brought the deceased to the Central Hospital, Baghmara and fled away from there.

4. The appellant has pleaded not guilty to the charges levelled against him and claimed himself to be innocent and has committed no offence and that he has been falsely implicated in this case. It is alleged that the deceased along with one Mangali had taken some poisonous substance for effecting abortion as a result of which the deceased has died whereas Mangali Devi could be saved and has survived.

5. In view of the oral and documentary evidence on the record the learned Court below found the appellant guilty for the offence punishable u/s 498A, I.P.C. only and convicted him and sentenced him as stated above. However, the appellant was not found guilty for the offence under Sections 302, 328 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act.

6. Now the question for determination in this case is as to whether there is any illegality in the impugned judgment and order requiring an interference therein.

7. The prosecution has examined 9 witnesses in all to substantiate the allegation levelled against the appellant. P.W. 8 is the informant, P.W. 7 is the brother of the informant and P.W. 9 is Teju Mahto, who has given the information regarding the death of Bhukhali Devi due to poisoning. P.Ws. 1, 2, 3 and 4 are the witnesses of the P.O. village and P.Ws. 2 and 4 had turned hostile and they do not at all support the prosecution case. P.W. 3 has been tendered by the prosecution. P.W. 6 is the medical witness, who has conducted the post mortem examination on the dead body of the deceased and Ext. 4 is the post mortem report. P.W. 5 is the l.O. of this case. Ext. 1 is the fardbeyan and Ext. 3 is the inquest report. One defence witness has been examined on behalf of the appellant and Ext. A is the charge-sheet of

Baraura P.S. Case No. 43 of 1990.

8. It has been submitted by the learned Counsel for the appellant that the learned Court below did not meticulously consider the evidence on the record in proper perspective and has gravely erred in finding the appellant guilty for the offence punishable u/s 498A, I.P.C. It has also been submitted that there is no iota of legal and reliable evidence on the record to show that immediately soon before the occurrence the appellant has treated the deceased with cruelty for demand of dowry. It has also been submitted that the evidence of P.W. 6 clearly indicates and establishes the fact that there was neither external nor internal injury on the person of the deceased and the deceased has taken poison voluntarily and it was not forcibly administered to her. It has also been submitted that the averments made in the fardbeyan (Ext. 1) of the informant and the evidence of P.W. 8, the informant, on oath is his general and facile statement which does not give an inkling of the fact that the deceased was treated with cruelty by the appellant in his house immediately soon before the occurrence. It has also been submitted that the appellant was leading a happy conjugal life with the deceased and on the day of the occurrence he was on his duty in the Colliery which stands proved by the testimony of P.W. 1. Lastly it has been submitted that the deceased along with Mangali Devi had taken some poisonous substance for abortion voluntarily out of their free will in the absence of the appellant and both were brought to the hospital for treatment but the deceased has expired and Mangali could have been saved.

9. The learned A.P.P. has submitted that the antecedent of the appellant shows that he had treated the deceased with cruelty earlier for the demand of dowry which led to a case filed by the deceased in the year, 1990 and the said case was compromised between the parties and the deceased started leading conjugal life with the appellant in his house and even thereafter the appellant had treated the deceased with cruelty by divorce means for the demand of dowry which ultimately resulted in an unnatural death of the deceased by poisoning.

10. It will admit of no doubt that the deceased was the lawfully wedded wife of appellant and their marriage was solemnised about 10 years prior to the occurrence in question. There is no denying the fact that the deceased had filed Baraura P.S. Case No. 43 of 1990 on 15.2.1990 against the appellant and others u/s 498A, I.P.C. and the said case was compromised between the parties and the deceased once again started leading conjugal life with the appellant in her matrimonial home. The deceased has died of unnatural death on 12.6.1994. P.W. 6 the medical witness has deposed that death of the deceased is due to ingestion of pesticide poison. The medical witness has further deposed that while conducting the post mortem examination he has not found any external injury on the dead body of the deceased and he also did not find any internal injury on the dead body of the deceased on dissection. In para 2 of his cross-examination the medical witness has very specifically deposed that he has not found internal or external injury on neck, wrist

or any part of the body of the deceased and it seems that no force was used in administering poison to the deceased. P.W. 5, the I.O., has deposed that he did not find any incriminating material at the place of the occurrence in course of inspection of the place of occurrence. The word "cruelty" u/s 498A, I.P.C. means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman, or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. In this connection Section 113-A of the Evidence Act, is relevant which provides that when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Section 113-B of the Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

11. It is pertinent to mention at the very outset that in this case the deceased was married 10 years ago prior to the occurrence The appellant was not found guilty for the offence punishable under Sections 302, 328, I.P.C. as well as under Sections 3 and 4 of Dowry Prohibition Act. In view of the findings of the learned Court below not finding the appellant guilty under Sections 3 and 4 of the Dowry Prohibition Act it becomes crystal clear that the deceased was not subjected to cruelty by the appellant for the fulfilment of the demand of dowry. Therefore, the cruelty or harassment of the deceased where such cruelty or harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand does not at all stands substantiated and it cannot be said that the deceased was subjected to cruelty for the demand of dowry soon prior to her death. Now the question for consideration is as to whether there was any wilful conduct on the part of the appellant which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the deceased. It is also pertinent to mention here that P.W. 6, the medical witness has not found any external or internal injury on the dead body of the deceased. The medical witness has further deposed that no force was used in administering poison to the deceased. P.W. 1 has deposed that the appellant was on his duty at the relevant time at Moraidih Colliery where he

used to work as loader and P.W. 1 has met the appellant in the said Colliery at 6.00 O''clock on the date of the occurrence where he was loading coal on the truck. The appellant was informed regarding the deceased taking poison in the colliery itself. Therefore, there is no question of any cruelty perpetrated on the deceased by the appellant on the date of the occurrence when the deceased had taken poison. P.W. 8, the informant has, however, deposed in para 2 of his evidence that whenever he used to go to the house of the appellant in the company of the deceased the appellant used to demand dowry from him and used to tell that he will not keep the deceased in his house and he used to assault the deceased and also he does not provide meal to the deceased. He has further deposed that this led to a case in the year, 1990 which was compromised. He has further deposed that after the compromise the deceased lived happily and peacefully for one month in her house but thereafter again the appellant started assaulting the deceased. He has also deposed that the deceased had three children born of the appellant. His evidence is further to the effect that the deceased used to come to his house and used to show the injury on her body whenever the appellant assaulted her and after making her understand he used to bring her back to her matrimonial home. He has also deposed that once when he had gone to the house of the appellant he was also assaulted by the appellant. P.W. 8, the informant, in his evidence on oath has not specifically stated as to when and on what date the appellant has assaulted the deceased prior to the occurrence. There is no evidence on the record in the testimony of P.W. 8, the informant, that the appellant has treated the deceased with cruelty immediately soon prior to the occurrence to drive her to commit suicide. The evidence of P.W. 7 is also general and facile in respect thereof. As against this P.W. 2 and P.W. 4 have deposed that there was cordial conjugal relationship between the appellant and the deceased. The medical witness has not found any external and internal injury on the dead body of the deceased. Therefore, there is no legal and reliable evidence on the record to substantiate the fact that the deceased was treated with cruelty immediately soon prior to the occurrence by the appellant. P.W. 1 has deposed that Mangali and Bhukhali have taken poison and on getting this information he had brought them to the hospital where Bhukhali, the deceased of this case, has died and Mangali, however, survived and she was treated at Baghmara as well as Central Hospital, Dhanbad. The evidence of P.W. 1 probablise the defence version that the deceased of this case along with Mangali had taken poisonous substance for getting aborted. And last but not the least there is no corroborative evidence on the record of any independent, natural and competent witness to show and establish that the deceased of this case has been treated with cruelty by the appellant in her matrimonial home as deposed by P.W. 8, the informant. The learned Court below did not meticulously consider the evidence on the record and has gravely erred in coming to a finding of guilt of the appellant u/s 498A,I.P.C

12. Considering all the facts, circumstances and the materials on the record, the impugned judgment and order regarding the conviction of the appellant u/s 498A, I.P.C. suffers with illegality which requires an interference therein. There is merit in the appeal and it succeeds. The appeal is hereby allowed. The impugned judgment and order regarding conviction of the appellant u/s 498A, I.P.C. is hereby set aside. The appellant is not found guilty for the offence u/s 498A, I.P.C. and he is acquitted. He is also discharged from the liability of the bail bond.