

(2006) 05 JH CK 0048

Jharkhand High Court

Case No: Criminal Appeal No. 18 of 2001

Jairam Singh, Ram Awadh Singh,
Smt. Hemawanti Devi and Usha
Kumari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: May 19, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 304, 304B, 498A

Citation: (2006) 4 JCR 654

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Advocate: A.S. Dayal, for the Appellant; Alok Lal, APP, for the Respondent

Judgement

D.P. Singh, J.

The appellants have preferred this appeal against the judgment and order of conviction and sentence dated 23rd December, 2000 and 2nd January, 2001 passed in S.T. No. 119 of 1998 by 3rd Additional Sessions Judge, Jamshedpur whereby and whereunder they have been convicted for the offence u/s 304(ii) of the Indian Penal Code and have been sentenced to undergo Rigorous imprisonment for three years.

2. Brief facts leading to their conviction are that the informant P.W. 2 Ramanand Singh submitted a written report to the officer in charge of Baghbera police station district Jamshedpur on 01.01.1997 alleging therein that his daughter Punam has been burn to death by the appellants on 25.12.1996. The informant has given detail that deceased Punam was married with the appellant Jairam Singh on 2.5.1993 according to Hindu customs. It is further stated that after one year of the marriage the appellant Jairam Singh and his father started demanding motorcycle, which

could not be fulfilled. It is further stated that in the year 1993 when his son P.W. 1 Santosh went to meet the deceased Punam, he was ill treated and demands of motorcycle was again made, he has given detail how the Punam was being ill treated by all the appellants physically and mentally. He further asserted that on 30.12.1996 he got a letter from his well wishers that Punam has died because of burn injuries on 25.12.1996, therefore he has lodged this written report. Baghbera police registered Baghbera P.S. Case No. 01 of 1997 u/s 498A, 304B and 3/4 of the Dowry Prohibition Act against all the appellants and started investigation of the case. The police finally submitted charge sheet against all the appellants and arrested the appellants. The case was committed for trial by the court of sessions. The learned lower court framed charge against all the appellants accordingly on 5.3.1999. The trial court after examining the witnesses came to the conclusion that the prosecution could not prove the dowry demands and torture as well as death of Punam u/s 304B of the Indian Penal Code. The learned lower court has however, held that the appellants allowed Punam to die because of burn injuries and they may be held responsible u/s 304(ii) of the Indian Penal Code. Accordingly, the trial court has sentenced them to serve R.I. for three years.

3. The appellants has preferred this appeal on the grounds that the learned trial court when acquitted the appellants from the charges u/s 304B/498A of the I.P.C. have committed gross error of facts and law by convicting them u/s 304(ii) of the Indian Penal Code. It is further asserted that the learned lower court has held them guilty for the offences without framing charge against them for this specific offence and having no material on record came to conclusion that they allowed Punam to die knowingly and intentionally. It is further asserted that the appellants were not given a chance to defend themselves properly while recording their statement u/s 313 of the Cr.P.C. It is further asserted that in spite of all witnesses having been declared hostile the learned lower court has relied upon the evidence of doctor who has conducted post mortem upon the dead body and ignored the settled principles of law.

4. The learned APP opposed this contention on the grounds that Punam died within seven years of her marriage in unnatural circumstances and the learned lower court has taken lenient view of the matter.

5. I have carefully gone through the materials on record and points stressed before me by learned Counsel for the appellants. This is a peculiar case in which the informant Ramanand Singh, his son Santosh Kumar Singh and other witnesses P.W. 4, 5 and 6 all have resiled from their earlier statements before the court. P.W. 6, teacher by profession has asserted in his examination in chief that his daughter was happy in her sasural and she never complained against them. He further denied that she has written any letter alleging torture for dowry etc. He specifically stated in his examination in chief that he can not say how she died though she died because of burn injuries. He has admitted his signature on the written report but denied it on

the seizure list. He was declared hostile by the prosecution in which he further denied his statement before police and allegations made in the written report. His son P.W. 1 Santosh Kumar Singh similarly resiled from the allegations they made against the appellants and was declared hostile. He has also denied during cross examination by prosecution that any letter was seized and given to police with his signature. He had denied seizure of the letter by the police before him P.W. 4 Ramashish Singh, P.W. 5 Harendra Singh, P.W. 6 Subodh Jha denied their statement before the police and preferred not to support the prosecution story. The lower court accordingly found and held that the prosecution has failed to prove the allegations u/s 498A and 304B of the I.P.C. against the appellants, however it has considered the evidence of P.W. 3 Dr. Lallan Chaudhary who has conducted autopsy on the dead body of the Punam Kumari at 3 p.m. on 25th December"1996. According to him K. oil smell was received from pieces of cloths covering the body. He found the entire body had burnt 100% except the inner side of lips, teeth and mouth. He has painstakingly mentioned that teeth and nostrils were without deposit of carbon particles suggesting that mouth was concealed by some clothing. He has further mentioned cause of death burn, shock and chest injuries caused by hard and blunt substances. He has ruled out such burn injuries due to accident.

6. The learned lower court has discussed all these circumstances in para 14 and 15 of the judgment and came to conclusion that the appellants were involved in setting afire Punam after assaulting her. Accordingly, while acquitting them from the charges u/s 304B and 498A of the Indian Penal Code, the learned lower court held them guilty of putting fire to Punam after sprinkling K. oil on her body with knowledge that such injuries may cause death or likely to cause death.

7. This is a case in which the father and brother of the deceased who preferred to make serious allegations against the appellants at the time of lodging FIR through a written report, later on changed their version and took u-turn to disown whatsoever they alleged against the appellants. The facts on record sufficiently show that those witnesses have concealed the fact and tried to help the appellant for obvious reasons. The circumstances on record shows that Punam died in unnatural circumstances within seven years of her marriage and the prosecution has made serious allegations regarding dowry demands and torture for the same. However, this fact has not been supported in the court and the learned lower court after considering the circumstances acquitted them from charges and offences u/s 304(B)/498A of the Indian Penal Code.

8. The learned lower court after acquitting the appellants from the charges framed has found sufficient material on records to hold them guilty for causing death knowingly as she died with 100% burn injuries. This finding is based upon circumstantial evidence. According to learned Counsel, even after the witnesses being hostile, the truth before the court emerged that Punam died with 100% burn injuries which was not accidental or suicidal. The entire facts have been discussed in

para 14 and 15 of the impugned judgment. According to the learned court below, the fire was set upon the person of Punam in the quarter where accused persons were present but they did not care to bring her to hospital or to extinguish the fire, getting support from the evidence of P.W.3, doctor and Ext.-3 Post Mortem report. He relied upon this circumstantial evidence and came to find that an offence u/s 304 IPC of the Indian Penal Code has been committed by the appellants accordingly he has sentenced them to serve R.I. for three years.

9. After going through the entire judgment and the material on records, it is undisputed a case in which deceased Punam died because of burn injuries caused by fire. The defence has not brought on records any such evidence to discredit the finding of the learned court below except that in absence of supporting evidence of P.W. 1 Santosh Kumar and P.W. 2 Ramanand Singh, both brother and father of the deceased, P.W. 4, 5 and 6 neighbors of the informant that dowry demands were made by the appellants, the finding of the trial court was bad. The learned Counsel for the appellants submitted that in absence of proof that dowry demands were made, the entire prosecution case should have been disbelieved. It was further contended that the learned trial court has committed a mistake of law when he convicted the appellants u/s 304 IPC without framing specific charge for this offence against the appellants. I find force in the argument as it is settled law that the accused persons should get fair chance to defend them against specific charges during trial. It is apparent from the records that even that the trial court has not framed charges u/s 304 IPC against the appellants but convicted them, which is apparently a mistake on the part of the trial court. I further find that the trial court has closed the evidence without examining the I.O. in the present case and no explanation is available on records. It is true that a young lady suffered death but at the same time the appellants also deserve fair trial for which specific charge u/s 304 IPC should have been framed and opportunity given to the prosecution as well as defence to adduce evidences. The investigating officer in the present facts is also essential to help the court in arriving at truth particularly when the informant and other witnesses have become hostile. The trial court did not care to examine the I.O. to find out the truth. In such cases, the duty of the trial court is also to ensure that prosecution as well as defence gets proper opportunity to adduce evidence for and against as is required for the ends of justice.

10. Having regards to the above mentioned facts and circumstances, in the present facts, I find that the judgment of trial court can not be sustained because of the fact that the appellants have been convicted u/s 304(ii) IPC without framing proper charge against them. Therefore re-trial is necessary for the ends of justice to arrive at truth. The judgment and order of conviction and sentence dated 23rd December"2000 and 2nd January"2001 passed in S.T. No. 119 of 1998 by 3rd Additional Sessions Judge, Jamshedpur is accordingly set aside and the original records of the case are remitted back to the trial court with direction of fresh trial of the appellants in accordance with law after framing charge u/s 304 IPC and

conclude it preferably within six months from the date of receipt of a copy of this order. The appellants are directed to appear before the lower court within six weeks from today to face retrial, failing which the lower court shall take suitable steps.