
(2011) 07 PAT CK 0140

Patna High Court

Case No: Criminal Appeal (SJ) No. 153 of 1997

Bishwanath Jha, Kedar
Nath Jha, Basuki Nath
Jha and Hira Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: July 21, 2011

Acts Referred:

Dowry Prohibition Act, 1961 " Section 3, 4#Penal Code, 1860 (IPC) " Section 201, 304B, 498A

Citation: (2011) 07 PAT CK 0140

Hon'ble Judges: Gopal Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Gopal Prasad, J.

These two appeals Cr. Appeal No. 153 of 1997 and Cr. Appeal No. 166 of 1997 are being heard together and

disposed of by the common judgment and order as both the appeals arises out of the same judgment and order dated 7th June, 1997 passed by

Sri Ram Prabodh Singh, Ist Additional Sessions Judge, Darbhanga in Session Trial No. 139/93/34/93 arising out of Bahera P.S. Case No. 143 of

1995, G. R. No. 373 of 1992 by which the Appellants have been convicted u/s 304B of the Indian Penal Code and have been sentenced to

undergo rigorous imprisonment for ten years. The Appellants have further been convicted u/s 201 of the Indian Penal Code and sentenced to

undergo rigorous imprisonment for three years. The Appellants have further been convicted u/s 498A of the Indian Penal Code and sentenced to

undergo rigorous imprisonment for two years and further convicted u/s 4 of the Dowry Prohibition Act and have been sentenced to undergo

rigorous imprisonment for one year with a fine of Rs. 2,000/- each and in default of payment of fine they are further sentenced to undergo

imprisonment for six months. However, it has been ordered that all the sentences shall run concurrently.

2. The prosecution case as alleged in the fardbeyan by Surendra Jha, the informant and the father of the victim is that the marriage of the victim

(deceased) Yamuna Devi was solemnized with the Appellant Tribhuwan Nath Jha in the year 1990 in the month of May and Duragaman was

performed in May 1992. The further case is that at the time of Duragaman Biswa Nath Jha, the father of Tribuwan Nath Jha demanded T.V. and

motor-cycle on which the informant promised to fulfill the demand in due course after managing the money and then the Duragaman was

performed. It is further alleged that the husband of the deceased and her in-laws used to subject her to cruelty to fulfill the demand and used to

pressurize her for the same. The further case of the prosecution is that the victim used to report the subjecting of cruelty and the informant several

times went to the Sasural in this connection and used to request the in-laws not to subject her to cruelty and even shown his inability to fulfill the

demand. On 21.06.1992 the informant came to Bahera and then learnt that the accused persons have done the victim to death by poisoning on

19.06.1992 and disposed of the dead body by cremating and then he brought Kabita, one year old daughter of the victim with him.

3. On the fardbeyan of the informant the FIR was lodged and after investigation the charge-sheet was submitted, cognizance was taken and then

the case was committed to the Court of Session. Thereafter the charge was framed under Sections 304B, 201, 498 and 3/4 of the Dowry

Prohibition Act and after framing of the charge the trial proceeded and ten witnesses were examined on behalf of the prosecution and five

witnesses were examined on behalf of the defence. After hearing both the side and considering the evidence of the prosecution and defence the

order of conviction and sentence were recorded as stated above.

4. Learned Counsel for the Appellant, however, contended that there is allegation of demand in the fardbeyan only by the husband and one Viswa

Nath Jha. The other Appellants live separately and some where out side the village in pursuit of their livelihood and at the time of taking the victim

to the hospital also those Appellants were not there and there is no participation of them and they were neither present at the time of death of the

victim nor were instrumental in the death. It has further been contended that P. Ws. 1, 2 and 3 have stated in their evidence that there is no demand

and the relationship with the victim in-laws were quite cordial. It has further been contended that the evidence of P.W. 4 is not reliable as he has

been examined for the first time in court and has not given any statement before the police and the evidence of P.W. 5 suffer from contradiction

regarding the demand and subjecting to cruelty. It has further been contended that the false case has been instituted to extract money as the

informant, the father of the victim had taken loan from the accused and this case has been filed so that the accused persons may not demand the

money.

5. Learned Counsel for the State, however, contended that the witnesses have supported the prosecution case and so far the evidence on demand

and subjecting cruelty is concerned, it is the father of the victim who is the best witness and he has supported the prosecution case both about the

demand and subjecting cruelty and there is nothing in his evidence to disbelieve and though the defence claim that the victim was taken to a doctor

for her treatment for her illness but the said doctor is an Ayurvedic doctor and has not given the cause of death either in his report which was Ext.

A nor prescription has been proved nor it has been stated either in his certificate nor in the evidence about the cause of death of deceased and

further no post-mortem examination has been done and the dead body has been disposed of without post-mortem having been conducted and

hence having regard to the circumstance since the marriage solemnized within seven years of the occurrence and there is allegation of demand and

subjecting cruelty and evidence to that effect and death is in suspicious circumstance and hence the prosecution has proved the case beyond

reasonable doubt and it is for the defence to prove his innocence and the defence having failed to discharge its onus and hence the order of

conviction and sentence recorded by the learned lower court is sustainable.

6. Perused the records in the light of the submissions made by the parties. However, there is allegation that the marriage was solemnized in the year

1990 and the occurrence took place in the year 1992 and there is allegation of demand and subjecting cruelty. However, in the evidence of P.W.

7 the informant has supported the prosecution case that the marriage was solemnized and at the time of Duragaman a demand was made by the

husband Biswa Nath Jha and there is allegation for demand and subjecting cruelty and the informant has supported the prosecution case in his

evidence and has stated that the victim was abused and assaulted and has stated that on 21.06.1992 then learnt that his daughter has been done to

death and it is apparent from the evidence of P.W. 7 the informant. However, P.W. 4 and 5 are the two brothers of the victim have come to

support the prosecution case but their evidence has been challenged on the ground that P.W. 4 has not been examined before the police though

this witness has stated before the police that his statement was recorded by the police but the I.O. P.W. 9 has stated that in his evidence Ram

Prakash Jha has not given any statement during the investigation. However, P.W. 1 and 2 are the seizure list witness and have come to support and

has stated that he saw the victim Yamuna Devi dead and was rolling in pain and she was taken to hospital. However, the witnesses 1, 2 and 3 have

stated in their cross-examination that the accused person used to love and give affection to the victim and there was no demand. But this evidence

in cross-examination is contrary to the evidence of P.W. 7 the informant and there is no reason to disbelieve the evidence of P.W. 7 who had

special knowledge. However, P.W. 3 is the out-sider. He has come to support that about the death of the Yamuna Devi and her suffering and

taking to the hospital. However, the defence has also adduced five witnesses and D.W. 1 is the doctor who is said to have treated the victim. The

said D.W. 1 is the Ayurvedic Medical Practitioner and however, proves Ext. A, that he treated the deceased. However, certificate Ext. A granted

certificate by the D.W. 1 who claims to have treated the deceased only mentioned in Ext. A that he treated but no mention what treatment was

given. However, in his entire evidence and certificate there is no mention of the disease neither the cause of death nor the prescription has been

proved and has stated that the victim was brought at 8:00 A.M and died at about 10:00 A.M.

7. However, having regard to the evidence of the defence it is apparent that the cause of death has not been ascertained and there was no post-

mortem examination though they have stated that Naihar people of the victim have come. However, taking into consideration the entire evidence

there is no specific evidence regarding the participation of the in-laws of the victim and there is evidence that they lived out side and some are in

service out side the place of occurrence, village and even the evidence regarding the demand and subjecting cruelty against the Appellants than the

husband is not specific.

8. Hence, having regard to the facts and circumstances the Appellants of Cr. Appeal No. 153 of 1997 who are in-laws of the victim are

concerned their participation or implication of the crime apparently appears to be doubtful and hence further the learned lower court did not

consider the aspect about their specific participation and convicted the Appellants of Cr. Appeal No. 153 of 1997 and hence having regard to the

facts and circumstances I find and hold that since there is no specific evidence regarding the participation of Appellant of Cr. Appeal No. 153 of

1997 and further the evidence that they are working out side, the order of conviction and sentence recorded against the Appellants of Cr. Appeal

No. 153 of 1997 is hereby set aside.

9. However, so far the husband is concerned since the marriage was solemnized and there is evidence against the husband about the demand and

subjecting cruelty and from the set of evidence it appears that it was the husband who had taken the victim to the hospital and the death of the

deceased was in suspicious circumstance as neither the post-mortem nor the cause of death has been ascertained and the dead body was disposed

of and hence the death is in suspicious circumstance. Hence, Cr. Appeal No. 166 of 1997 is hereby dismissed.

10. Cr. Appeal No. 153 of 1997 is allowed and the conviction and sentence recorded against the Appellants of Cr. Appeal No. 153 of 1997 is

set aside and the Cr. Appeal No. 153 of 1997 is allowed.