

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.1701 of 2017

(Against the judgment of conviction dated 19.07.2017 and order of sentence dated 20.07.2017 passed by learned District & Additional Sessions Judge-II, Dumka in Sessions Trial No. 193 of 2014).

Surendra Khirwar, S/o Late Jagarnath Khirwar, R/o Village Hathnaga, P.O. & P.S.-Jama, District- Dumka, Jharkhand

... Appellant(s).

Versus

The State of Jharkhand

... Respondent(s).

PRESENT

SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

For the Appellant(s) : Mrs. Bandana Kr. Sinha, Advocate

For the Respondent(s) : Mr. Manoj Kr. Mishra, APP

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J U D G M E N T

By Court:
(30.09.2024)

We have heard the learned counsel appearing for the appellant and the learned counsel for the State.

2. This Criminal Appeal arises out of the judgment of conviction dated 19.07.2017 and order of sentence dated 20.07.2017 in Sessions Trial No.193 of 2014 whereby and whereunder learned District & Additional Sessions Judge-II, Dumka convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life with fine of Rs. 20,000/-.

3. Counsel for the appellant submits that the conviction is under Section 302 of the Indian Penal Code, though the charge was framed under Section 498A/304B and 302 of the Indian Penal Code, since the demand of dowry and torture for non-payment of dowry was not substantiated. She further argues that there is no eye witness to the said occurrence and the only circumstances to convict the appellant is that he is the husband of the deceased and the occurrence had taken place in the house of this appellant. As per the counsel for the appellant, when admittedly there were other inmates of the house present there, this appellant being the husband could not have been solely convicted leaving the others, more so when there is

nothing specific that this appellant was only involved in this occurrence. She further argues that none of the prosecution witnesses have supported the prosecution case. She lastly argues that admittedly there is no dying declaration of the deceased in this case, thus there is no material against this appellant to convict him.

4. Counsel for the State submits that admittedly the appellant is the husband of the deceased and it has come in evidence that there was marital discord and the death is unnatural i.e. by burn, thus this appellant being the husband is liable to be convicted.

5. The FIR is at the instance of P.W. 4, who is the father of the deceased. He stated in the *fardbeyan* that after the marriage of the deceased with this appellant, his daughter lived happily only for two years. Thereafter a child was born and dispute started between the husband and the wife as well as with the other family members. They were bent upon to drive out the deceased from their house, for which, she was often abused and tortured. He received information that his daughter was burnt to death by sprinkling kerosene oil by the family members of the appellant, thereafter he went the matrimonial home of his daughter and saw the deceased in burnt condition. He also found a container of kerosene oil at the place of occurrence. The deceased was taken to Jarmundi Hospital and from there she was referred to Deoghar Hospital, where she died in course of treatment.

On the basis of this statement, FIR being Jarmundi P.S. Case No. 90 of 2014 was registered under Sections 498A and 302/34 of the Indian Penal Code. After investigation, the police submitted chargesheet under Sections 498A/302/34 of the Indian Penal Code against this appellant. Accordingly, cognizance of the offence was taken and the case was committed to the Court of Sessions for trial. As the appellant pleaded not guilty, charges were framed against him for the aforesaid section.

6. To prove the prosecution case, altogether six witnesses were examined by the prosecution, who are as follows:-

P.W.-1 Nakul Mandal

P.W.-2 Pappu Mandal

P.W.-3 Dr. Paul Hansda

P.W.-4 Baikund Mandal, informant of this case

P.W.-5 Suresh Prasad Rajak, Investigating Officer

P.W.-6 Brijkishor Shukla

7. The following documents were also exhibited by the prosecution:-

Exhibit-1: Signature of Nakul Mandal (P.W.-1) on seizure list.

Exhibit-1/1: Signature of Pappu Mandal (P.W.-2) on inquest report.

Exhibit-2: Postmortem report

Exhibit-3: Signature of Baikund Mandal on fardbeyan

Exhibit-4: Formal FIR

Exhibit-5: Handwriting and signature of S.I. Ramawatar Yadav

Exhibit-6: Endorsement

Exhibit-7: Carbon copy of inquest report

Exhibit-8: Map of place of occurrence

Exhibit-9: Seizure list

Exhibit-10: Memo of arrest

Exhibit-11: Forwarding letter

8. The prosecution has also produced material in support of its case, which are as follows:-

Material Exhibit-I: Lantern Green colour without cap and mirror.

Material Exhibit-II: Empty Plastic bottle with cap.

9. After completion of prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C.

10. The Trial Court thereafter considering the evidences had convicted the appellant for committing the offence and sentenced as aforesaid.

11. P.W.-1 is the neighbour, who stated that in the evening, he heard the commotion near the house of this appellant. He reached there and found that the wife of this appellant was burnt but she was alive. Police came thereafter and sent the injured to the hospital. One lantern and one bottle were recovered. He is the witness to the said recovery and identified his signature on it, which is marked as Exhibit-1. He further stated that his statement was not recorded by the police and he came to know by the villagers that the wife of Surender got burnt. He further stated that villagers were saying that she had burnt herself.

P.W.-2 is the brother of the deceased, who stated that this appellant used to torture and assault the deceased and demand money. On

05.04.2014, the deceased was assaulted by this appellant and thereafter was burnt after sprinkling kerosene oil. He received the information from someone of the village of the appellant, then he along with his father, brother and mother went to the house of this appellant and saw his sister lying in burnt condition. With the help of Ambulance, she was sent to the hospital but she died on the same day. He further stated that police came to the hospital, prepared the document of dead body and he put his signature as witness which was marked as Exhibit-1/1. He is deposing for the first time in the Court, he also narrated that in his presence also money was demanded, but he admits that he had not seen the occurrence and denied the suggestion that the deceased died while she was cooking.

P.W.-3 is the Doctor, who conducted the postmortem of the deceased. He found the following injuries:-

Antemortem examination:-

The whole body is charred from the head to both lower limbs and both upper limbs and trunk except lower back with 90% burnt.

Frothy bleeding from nose.

On dissection of the body of the deceased following injuries are found:-

1. Brain hemorrhage is present with blood.

He has also narrated that there was 90% burnt in this case. In his opinion the death was caused is due to shock and haemorrhage. The postmortem report was marked as Exhibit-2.

P.W.-4 is the father of the deceased. He also stated in the similar line as that of the P.W.-1. He stated that after receiving the information of burning of his daughter he and along with others went to the matrimonial home of the daughter. He also stated that this appellant and others used to torture her and always demanded money. He received information that after sprinkling kerosene oil, she was burnt. In his cross-examination, he stated that when they reached there, he found his daughter in burnt condition, she was saying something but her voice was not clear thus she could not hear. He also denied that the deceased died a accidental death.

P.W.-5 is the Investigating Officer, who investigated the occurrence and submitted the chargesheet. This witness exhibited the inquest report

and also stated that he has filed the chargesheet under Section 498A and 302 of IPC.

12. P.W.-6 produced the materials which were seized. He produced the lantern without cap and cover, which was marked "MR06/14" and he also produced the plastic bottle with a cap, which is marked as Material Exhibits-I and II. In his cross-examination, he stated that all these materials are easily available in the market.

13. Thus, from the aforesaid evidence, we find that the circumstances which are against this appellant is that the death had taken place in the house of this appellant. The death was due to burn injury and there was marital discord between the deceased and the appellant.

14. The prosecution has failed to prove any demand of dowry soon before death by this appellant thus, the Trial Court had rightly not convicted the appellant under Section 304B and 498A of the Indian Penal Code. So far as Section 302 of IPC is concerned, to prove the offence under Section 302 of IPC, it is to be proved that the death is homicidal.

15. In this case there is allegation that the deceased was murdered by this appellant, but as stated earlier there is no eye witness to the said occurrence. Since the conviction is under Section 302 of IPC and the fact that is no demand of dowry, there cannot be any presumption of guilt against this appellant. The prosecution has to prove the guilt of this appellant beyond all reasonable doubt. Furthermore, when the case is of circumstantial evidence, the chain of circumstance must be complete and each of the circumstances should be proved beyond all reasonable doubt. In this case the only circumstance is that the deceased died in the house of this appellant. P.W.-1, though was declared hostile had stated that he heard from the villagers that the deceased had burnt herself.

16. There is probability that the deceased had committed suicide as a lantern without glass and a bottle with cap was found at the place of occurrence. The recovery of this material is not a conclusive prove that the appellant had murdered the deceased by sprinkling kerosene oil. The other side is possible that the deceased had committed suicide by sprinkling kerosene oil upon herself. Though, the deceased was alive but she was not in a position to give her statement which is evident from the

evidence of P.W.-4 itself. Thus, there is a doubt over the involvement of this appellant and also there is a doubt as to whether the death is suicidal or homicidal. When a genuine doubt has been created by the defence in the mind of this Court about the nature of death, it is not proper for us to convict this appellant under Section 302 of IPC. Thus, we set aside the judgment of conviction dated 19.7.2017 and order of sentence dated 20.7.2017 passed by learned District and Additional Sessions Judge-II, Dumka in Sessions Trial No. 193 of 2014 by giving the appellant benefit of doubt.

17 Accordingly, the instant Criminal Appeal is **allowed**.

18. As the appellant is in custody, he shall be released forthwith, if not required in any other case.

19. Let a copy of the judgment along with the Trial Court Records be sent back to the Court concerned forthwith.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand, Ranchi

Dated : 30.09.2024

NAFR-R.S.& Anu/-Cp3.