
(2013) 03 MP CK 0060

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 541 of 1996

Amar Bahadur and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2013) 3 DMC 71

Hon'ble Judges : Tarun Kumar Kaushal, J

Bench : Single Bench

Advocate : Siddharth Datt and Mr. Rajendra Patel, for the Appellant; Alok Tapikar, for the Respondent

Final Decision : Partly Allowed

Judgement

Tarun Kumar Kaushal, J.—This appeal has been preferred against judgment dated 29.2.1996 passed by Fourth Additional Sessions Judge, Rewa in S.T. No. 289/1995 convicting the appellant under Sections 498A and 304B, IPC sentencing them to rigorous imprisonment of three years and ten years, respectively and with fine. Facts of the case, in short, are that about seven years prior to the date of incident i.e. 22.7.1995, Shyamkali (since deceased) was married to appellant No. 1 Amar Bahadur. During the period of seven years, deceased was subjected to cruelty and harassment on account of demands and on account of the fact that she had no issue. Though family members of deceased tried to satisfy the needs and demands of the appellants, however, on 22.7.1995 at her matrimonial house, deceased died as a result of burn injuries. Police Tyonthar registered Marg Exh. P/5 in respect of death of the deceased and prepared naksha panchnama of the laash of the deceased Ex. P/8. Dr. Ananya Mahendra (PW/1) performed post-mortem of the dead body of the deceased at Primary Health Centre, Tyonthar and prepared post-mortem report Ex. P/1, in which cause of death was found to be neurological shock and asphyxia due to excessive burn injuries.

2. During investigation, on 29.7.1995 Police seized pieces of burnt clothes and container of kerosene vide Ex. P/9 japti panchnama and registered a case at crime No. 24/95 at Police Station, Saneh, District Rewa under Sections 304B and 498A, IPC against the appellants. On 22.8.1995, police arrested the appellants and after completing the investigation submitted a charge-sheet against the appellants in the Court of concerned Judicial Magistrate, First Class who committed the case of trial before the Court of Session.

3. Trial Court framed charges under Sections 304B and 498A, IPC. Appellants abjured guilty and pleaded innocence. To substantiate the case of prosecution, statements of Dr. Ananya Mahendra (PW/1), Laxman, father of deceased (PW/2), Nirmala, sister-in-law Bhabhi of deceased (PW/3), Indrakali, sister-in-law Bhabhi of deceased (PW/4), Bankelal, neighbour of appellants (PW/5), Shriniwas Tiwari, Patwari (PW/6), P. Singh, SHO (PW/7), Rajbahadur Singh, brother of deceased (PW/8), Bhinjgi Narayan (PW/9), Kalu Prasad, Constable (PW/10), Amrutlal, Constable (PW/11) and Ravishankar Pandey, Sub-Inspector (PW/12) were recorded. After appreciating the aforesaid evidence, vide impugned judgment dated 29.2.1996, Trial Court convicted and sentenced the appellants as above.

4. Assailing the impugned judgment, appeal has been preferred on the grounds that appreciation of evidence is not proper. Conviction of appellants u/s 304B is bad in law and is against the evidence on record because prosecution has failed to prove the fact that incident occurred within the period of seven years of the marriage. In all, sentence is harsh. On the other hand, learned Panel Lawyer supported the findings of conviction and sentence both.

5. On perusal of evidence of Laxman, father of the deceased (PW/2), Nirmala (PW/3) and Indrakali (PW/4), Bhabhis of the deceased, Raj Bahadur, brother of the deceased (PW/8), it appears that none of have stated the date, month and year of the marriage of the deceased. They failed to remember the date, month and year of the marriage. Time of marriage has been narrated by them on the basis of some important events. Father of the deceased (PW/2) stated that his daughter married about 7-8 years ago. Bhabhi (PW/3), in para 4 of the statement stated that her marriage took place about 14-15 years ago and after 4-6 years of her marriage, deceased was married. Bhabhi (PW/4) in para 2 of the statement stated that her marriage took place about 9 years ago and one year thereafter deceased was married. Brother (PW/8) in para 4 stated that his marriage took place about 14-15 years ago and after 4-5 years his sister was married. In next breath, PW/8 stated that after 8-9 years of his marriage, deceased got married.

6. In view of the aforesaid evidence, it has been revealed that nobody knows the exact date, month and year of the marriage of the deceased. Father, two sister-in-laws and brother are giving the estimated duration of marriage to be either of seven years or more than seven years. Only brother (PW/8) tried to change the stand by saying that about 8-9 years prior to his marriage deceased got married. But such a shift from his earlier statement, is not acceptable rather it appears to

be improvement attempted by him to bring the date of marriage within the period of seven years from the date of incident.

7. In para 12 of the impugned judgment, Trial Court has appreciated the aforesaid evidence in detail but wrongly extended the benefit of doubt of the discrepancies crept in oral evidence in respect of duration of marriage. If at one point of time some witnesses say 7 or 8 years prior to the date of incident, even then Trial Court opted a period of seven years only. This is not the way of the appreciation of evidence. In respect of date of marriage whatever has been said by PW/2, PW/3, PW/4 and PW/8, by any stretch of imagination, cannot be said that marriage took place within a period of seven years from the date of incident. At face value of their statements, this incident took place after a period of seven years or more from the event of the marriage.

8. In view of the aforesaid, necessary ingredients of Section 304B, IPC are missing in evidence available on record. Prosecution could not succeed to prove the fact that deceased died of burn injuries in her matrimonial house within a period of seven years of her marriage rather deceased died of burn injuries in her matrimonial house after a period of seven years of marriage or after some more period. Accordingly, benefit of presumption of Evidence Act also is not available to the prosecution in this case.

9. On careful perusal of the evidence of aforesaid witnesses, it remains no longer disputed that deceased was subjected to harassment and cruelty in respect of the demands as well as on the ground that she had no issue even after a period of seven years of the marriage. Trial Court has dealt each and every fact in right perspective in that regard. There appears no error insofar as findings of conviction u/s 498A IPC is concerned.

10. Unfortunately neither prosecution nor Trial Court ever thought for alleging/ framing of charge u/s 306, IPC against the appellants. Though in this sad incident deceased has lost her life as a result of burn injuries but at this stage in such a case nothing much can be done by this Court.

11. As discussed above, conviction of appellants u/s 304B, IPC renders unsustainable and appellants are entitled for acquittal of the charge u/s 304B, IPC. However, conviction of appellant u/s 498A, IPC is maintained. At this stage, it is submitted by the learned Counsel for the appellants that aforesaid incident took place about 18 years ago. Father-in-law of the deceased has completed 70 years of age and mother-in-law has completed 60 years of age. At the time of the incident, husband was aged 22 years. It was the first offence as well as the last, reported so far. During investigation, trial and appeal, appellants have suffered a custody period of one year in this case. It is further prayed that no useful purpose is served in sending the appellants again back in jail on account of this incident. On the other hand, learned Panel Lawyer prays for appropriate sentence.

12. Considering the rival contentions, in the interest of justice, for an offence u/s

498A, IPC, appellants are sentenced to one year rigorous imprisonment and with fine of Rs. 3,000 each. In default of payment of fine, appellant shall undergo simple imprisonment of three months. Appeal is allowed in part. Appellants are acquitted of the charge u/s 304B, IPC. However, conviction of appellants u/s 498A, IPC is maintained as above with modification in jail sentence, that is reduced from three years to one year R.I. and fine is enhanced as above. Appellants are directed to remain present in Trial Court on or before 22.4.2013 for deposit of fine amount or to undergo fine sentence, as the case may be.