

(2005) 09 MP CK 0051

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 214 of 1996

Amritlal and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294, 313
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2006) CriLJ 888 : (2006) 1 DMC 630 : (2006) 3 JLJ 85 : (2006) 1 MPLJ 610

Hon'ble Judges : S.L. Kochar, J; S.K. Gangele, J

Bench : Division Bench

Advocate : K. Vyas, for the Appellant; Girish Desai, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

The appellants have approached this Court being aggrieved by the judgment of conviction and sentence, passed against the appellants by V Additional Sessions Judge, Indore in Sessions Trial No. 448/93 dated 29.2.1996, thereby finding the appellants guilty for the offences punishable under Sections 498A/34 and 304B/34, I.P.C. and sentencing each of them to suffer rigorous imprisonment for 2 years and life imprisonment respectively.

The prosecution case, as furlled before the Trial Court, in short, is that in the year 1991, deceased Amulbai was married with appellant No. 1 Amritlal. Basantibai and Sonabai are sisters-in-law of deceased Amulbai. Acquitted accused Balaram and Dwarkabai, were father-in-law and mother-in-law respectively and Sadharam was the brother-in-law (Dewar) of the deceased. After marriage deceased Amulbai started living with her in-laws in Anandnagar. For about six months, she was kept properly and thereafter they started demanding dowry and on non-fulfilment of their demand they started ill-treatment and beating Amulbai. They were asking Amulbai to bring money for purchasing scooter. On

failure to bring money by Amulbai, her husband Amritlal, sister-in-law Sonabai and Basantibai ablazed her by pouring kerosene oil. She was admitted in M.Y. Hospital, Indore. She suffered 100 percent burn injuries and on 4.5.1993, in the night at 9.55 p.m. she died. Police of Station Rajendra Nagar, Indore, received information about the death of Amulbai, from the MY. Hospital, on telephone, which was recorded as Murg intimation vide Exh. P/1. Thereafter, P.W. 7 Kama Singh Bundela CSP reached the hospital. He prepared inquest Exh. P/4 and after recording the statement of some witnesses, registered First Information Report Ex. P/6 in the same night, at 8.45 p.m. He sent dead body of the deceased Amulbai for post mortem examination. Post-mortem was performed by Dr. Ravindra Choudhari, who has not been examined by the prosecution because along with the medical requisition form filed by the police, Post Mortem report was admitted by the defence and the same has been exhibited as Ex. P/13. Deceased Amulbai was admitted in the hospital. P.W. 3 K. Tiwari prepared her Medico Legal Certificate (MLC). According to the post-mortem report, Ex. P/13, deceased suffered 80 per cent burn injuries, ante-mortem in nature and died due to cardio respiratory failure, as a result of burn and its complications, she died within 24 hours from performance of autopsy. The autopsy was performed on 5.5.1993 at 11.15 p.m. After necessary investigation, charge-sheet was filed against six accused person.

Appellants denied charge According to their accused statements u/s 313, Cr. P.C., on the date, when deceased Amulbai sustained burn injuries, except Dwarkabai, none was present, in the house. They have been falsely implicated in the case. They examined D.W. 1 Sundarlal, D.W. 2 Pyarelal as defence witnesses Learned Trial Court relied on the testimony of, P.W. 1 Shardabai, P.W. 2 Baluram, P.W. 5 Mayaram, and P.W. 6 Umrao. While disbelieving the evidence of P.W. 1 Shardabai and P.W. 2 Kaluram about oral dying declaration made by the deceased before them in the hospital. For demand of dowry and on failure to fulfil their demands by the parents of the deceased, ill-treatment and cruel behaviour with the deceased, because of which deceased met unnatural death by burn injuries, within 7 years of her marriage, learned Trial Court acquitted 3 accused persons Dwarkabai, Balaram and Sadhuram, (mother-in-law, father-in-law and brother-in-law), and convicted the present appellants i.e., husband Amritlal, married sisters-in-law (Basantibai and Sonabai).

Learned Counsel for the appellants, has submitted that there is no cogent and reliable evidence, adduced by the prosecution to establish that deceased Amulbai met with unnatural death by burn injuries within 7 years from the date of her marriage. He has also submitted about insufficiency of the evidence regarding demand of dowry and ill-treatment with the deceased. According to the learned Counsel, if these ingredients are not proved beyond all reasonable doubt, conviction of the appellants is not sustainable.

On the other hand, learned Deputy Advocate General appearing for the State Mr. Girish Desai, has submitted that as per prosecution witnesses deceased was ill-

treated for bringing dowry/money for purchasing scooter and because of failure to do so, by the parents of the deceased, the deceased was ill-treated by the appellant. He has also submitted that there cannot be any dispute about the death of the deceased otherwise than in normal circumstances and the deceased sustained burn injuries inside the house of the appellants, therefore, burden lies on the appellants to explain the same.

Having heard learned Counsel for the parties and after perusing the entire evidence, we are of the opinion that the prosecution has failed to prove that deceased died within 7 years from her marriage. P.W. 1 Shardabai, sister of the deceased has deposed in paragraph 1 of her examination-in-chief that the deceased was married with appellant No. 1 Amritlal before three years from the date of her examination in Court i.e., 25.11.1994. In the same breath, in paragraph 2, she has deposed that at the time of incident i.e., on 4.5.1993 deceased was having one daughter aged 6-7 year. In cross-examination paragraph 4 she has stated that the daughter of the deceased is residing with the appellant and she had not done anything to keep the daughter with her. P.W. 2 Baluram, in paragraph 3 has stated that deceased Amulbai was married before 8-9 months prior to the date of the incident. P.W. 5 Mayaram, brother of the deceased in paragraph 1 has stated that his sister deceased Amulbai was married before five years from the date of his examination in Court i.e., 5.9.1995, in para 11 he further deposed that after one and half year, of leaving her first husband, she entered into second marriage with the appellant No. 1, at that time she was 16-17 years of age, she lived with her first husband only for 6-7 months and her first husband is still alive.

In post-mortem examination the age of the deceased is mentioned 30 year. On assessment of the period of marriage of the deceased with the appellant No. 1, goes much beyond 7 year. In paragraph 24, P.W. 1 Shardabai, has also admitted about the daughter of the deceased living with appellant Amritlal. P.W. 6 Umrao says that the marriage of deceased Amulbai with appellant No. 1 Amritlal was solemnized before 5 years from the date of his examination in Court. On the basis of this statement of the prosecution witness, learned Trial Court formulated the question as question No. 1 u/s 313, Cr. P.C. and came to the conclusion that on the basis of the statements of P.W. 1 Shardabai, P.W. 2 Baluram and P.W. 5 Mayaram, it is crystal clear that deceased Amulbai was married with appellant Amritlal before 6-7 years from the date of their statement. We are unable to agree with this conclusion of the learned Trial Court because none of the prosecution witnesses has said so. Even if for the sake of argument, if it is accepted that marriage was solemnized after 6-7 years from the date of the examination of the P.W. 1 Shardabai i.e., on 25.11.1994, 7 years would be outer range. Therefore, this finding of the learned Trial Court in paragraph 26, is not sufficient to hold that deceased met with death otherwise in normal circumstances because of burn injuries within 7 years from her marriage. It is pertinent to note here, that all the aforementioned prosecution witnesses have nowhere given any date, month or year of the marriage. On the contrary, all the

witnesses have given contradictory statements about the period of marriage of the deceased with appellant No. 1 Amritlal. In view of positive statements of P.W. 1 Shardabai given in examination-in-chief that on the date of the incident, deceased Amulbai was having daughter aged 6-7 years, as well as in view of the statement of star witness P.W. 5 Mayaram, brother of the deceased, she was married first time when she was 16-17 years of age and she lived with her first husband for 6 month Thereafter again she married with appellant No. 1 Amritlal. As stated above, in post-mortem report, her age is mentioned 30 years and this age must have been mentioned by the doctor on the basis of information given by appellant No. 1 Amritlal and P.W. 5 Mayaram. In inquest report, Ex. P/4 proved by P.W. 7 Kamalsingh Bundela, age of the deceased is mentioned as 30 year All these facts are establishing that the deceased did not die within 7 years of her marriage. The next question for determination before us is whether the deceased met with death otherwise in normal circumstances and she was ill-treated for demand of dowry. Since the deceased died because of burn injuries, it is amply established that she died otherwise in normal circumstance But for the fact that she committed suicide there is absolutely no evidence on record. There is also no evidence available on record that she was set fire after pouring kerosene oil by the appellant The prosecution has not got proved her first MLC report though filed along with the charge sheet which must have been prepared by P.W. 3 Dr. K. Tiwari, who attended the deceased on 4th May, 1993 in the evening at 7.30 p.m., P.W. 3 Dr. Tiwari has also given her age in his statement as 30 year She was immediately admitted in the hospital in burn ward and given treatment. She died at 9.55 p.m. the same day. Though along with the charge sheet, bed head ticket of the deceased was filed but because the same has not been got proved by the prosecution. It appears that these medical documents have not been got proved deliberately by the prosecution because the same were disclosing some other story or/facts about the death of the deceased. The glimpses of the same are available in inquest report in Ex. P/4 prepared by P.W. 7 Kamalsingh Bundela Investigating Officer, in presence of all Panchas including P.W. 5 Mayaram brother of the deceased and P.W. 2 Baluram brother-in-law of the deceased, wherein it is mentioned that while cooking food, Sari of the deceased caught fire and she sustained burn injuries because of said incident. In medical requisition form Ex. P/13 sent by the police on 5.5.1993 at 11.15 a.m. it is mentioned that P.W. 5 Mayaram brother of the deceased, had disclosed that the deceased sustained burn injuries while cooking food from "Chuilha" (earthen oven). On perusal of inquest Ex. P/4, which was prepared on 4.5.1993 at 9.55 p.m. as well as medical requisition form Ex. P/I 3, prepared on 5.5.1993 at 11.15 a.m. it emerged that the deceased sustained burn injuries while cooking food. The factum of sustaining of burn injuries accidentally also finds support from MLC report, post-mortem report as well as inquest which are not showing presence of smell of kerosene oil.

It appears that after post-mortem on 6.5.1993, brother of the deceased and other relations raised suspicion and levelled allegation against accused persons

and their family members, that the deceased was ill-treated for demand of dowry and on non-fulfilment of demand, she was murdered but the prosecution has utterly failed to substantiate this story and ultimately charge sheet was filed only under Sections 304B/34, I.P.C. P.W. 1. Shardabai sister of the deceased, in examination-in-chief Para 3, has deposed that the deceased was having quarrel with her husband and sister-in-law. They were picking up quarrel with her on account of non-performance of house hold work or labour work. In paragraph 4 she has further deposed that before one and half month of her death, she came to her house and disclosed about beating to her by the appellants, she was pacified and sent back to her matrimonial home. If the deceased was really ill-treated for the demand of dowry, she would have certainly mentioned this fact to her sister P.W. 1 Shardabai but nothing sort of this, has been mentioned in the statement of P.W. 1 Shardabai, P.W. 2 Baluram brother-in-law of the deceased, has also in paragraph 2, in examination-in-chief, deposed that before 1-2 months prior to the death of Amulbai, she disclosed about her beating by appellants but she did not disclose the reason This witness has no where stated about demand of dowry in cash or kind. The say of P.W. 5 Mayaram brother of the deceased in paragraph 2 is that appellants and acquitted co-accused persons were picking up quarrel with the deceased and also beating her and that appellant No. 1 Amritlal was demanding R 3,000 from him for purchasing scooter. He promised him to satisfy his demand within a month but during this period, appellants were beating his sister. In paragraph 2, he has further stated that he went to appellants with money but the appellants refused to accept the same and he returned back to his house. After one month he received the information from one Sohan about sustaining of burn injuries by her sister. He reached the house of his elder brother-in-law Baluram, in the night 11.00 a.m. in the same day. After knowing the fact of admission of his sister in M.Y. Hospital, he reached there, where he got the information about the death of her sister. This witness has admitted his signature at portion "A" to "A" on inquest report Ex. P/4 and Ex. P/3 notice to the witnesses of inquest. In the inquest report, it is mentioned that deceased Amulbai sustained burn injuries accidentally, while cooking food. Again in cross-examination Para 16, he has stated that when he went to the house of her sister deceased Amulbai to pay money, Amulbai and appellant No. 1, refused to accept the same. In paragraph 23 he has deposed that he came to know that his sister was ablazed after pouring kerosene oil but he himself had no personal knowledge. In paragraph 24, he has also admitted that his sister left one daughter, who is residing with appellant No. 1.

The Division Bench of this High Court in the case of Nahadariya v. State of M.P. 1980 J.L.J. 501, has held that:

Post-mortem report cannot be relied on without examining the doctor even if the defence Counsel is admitting the post-mortem report as per provision u/s 294, Cr. P.C., Division of Bench this Court has specifically held that such report cannot be admitted in evidence without examining the doctor". Also see Jagdeo Singh and Ors. v. State : 1979 Cr. L.J. 236, and Ganpat Raoji Suryavanshi Vs. State of

Maharashtra, .

In view of this legal position, as a matter of fact, post-mortem report Ex. P/13 is not admissible document in evidence and also cannot be looked into. Since this report has not been put to the accused persons in their statements recorded u/s 313, Cr. P.C., therefore, the same cannot be relied on without giving opportunity to the accused persons to explain the circumstances falling against them. (1980 J LJ 501)

Another important witness of the prosecution is P.W. 6 Umrao, who has not been declared hostile. According to this witness, he was the person, who proposed Amulbai to marry with appellant No. 1 Amritlal and his mediation was accepted by both the parties In paragraph 4 he has stated that deceased Amulbai and appellant No. 1 were residing happily. This witness has nowhere stated that the deceased was ill-treated for demand of money or cash. Though this witness has stated that deceased Amulbai disclosed him about her ill-treatment but she did not disclose reason.

On the basis of the aforementioned evidentiary material adduced by the prosecution, we are unable to come to the conclusion that the deceased met with death otherwise than its normal course within 7 years of her marriage and soon before her death she was ill-treated for demand of dowry, therefore, we are constraint to hold that the prosecution has utterly failed to prove its case from all reasonable doubt.

Consequently, this appeal is allowed. The conviction and sentence of the appellants are hereby set aside. The appellants are on bail, their bail bonds and surety bonds stand cancelled.

Copy of this Judgment be sent to the Trial Court for compliance.