
(2009) 08 MP CK 0043
In the Madhya Pradesh High Court

Awdhesh Prasad Dwivedi and Others	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

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

Citation : (2009) 08 MP CK 0043

Hon'ble Judges : Sushma Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sushma Shrivastava, J.—Appellants have preferred this appeal challenging their conviction and order of sentence passed by Special Judge, Rewa in S.T. No. 93/99, decided on 26.04.2000.

2. Appellants have been convicted u/s 498A of IPC and sentenced to rigorous imprisonment for one and half year with fine of Rs. 500/-, in default further rigorous imprisonment for one month, by the impugned judgment.

3. According to prosecution, deceased Maya Devi (hereinafter referred to as "deceased") was married to appellant No. 3 Harivilas, the son of appellant No. 1 in the year 1989. Her gauna was performed in the year 1993. After her gauna, appellants, i.e. the husband, father-in-law and brother-in-law of the deceased, subjected her to cruelty and harassment, as a result of which deceased Maya Devi committed suicide by consuming Celphos on 1.08.98. The intimation of her death was given to the Police by her father-in-law, Awdhesh Prasad Dwivedi, on the basis of which merg intimation was recorded at Police Station Atraila and merg inquest was made. Dead body of deceased Maya Devi was sent for postmortem examination. After merg enquiry, an offence was registered against the appellants and was investigated. After due investigation, appellants were prosecuted u/s 498A, 304B of IPC and were put to trial.

4. Appellants abjured the guilt and pleaded false implication. According to

appellants, deceased was an educated person and hailed from well to do family; appellants being poor persons were unable to fulfil her demands, which led her to commit suicide.

5. Learned Special judge, after trial and upon appreciation of the evidence adduced in the case, acquitted the appellants of the charge u/s 304B of IPC by extending them benefit of doubt, but found them guilty for committing offence u/s 498A of IPC, convicted and sentenced them as aforesaid by the impugned judgment, which has been challenged in this appeal.

6. Learned Counsel for the appellants submitted that the trial court erroneously convicted the appellants, though no case was proved against them. Learned Counsel for the appellants urged that the trial court disbelieved the evidence of the related witnesses against the appellants regarding demand of dowry, but erroneously convicted them u/s 498A of IPC on the same evidence. He also submitted that the trial court gravely erred in relying upon the letter (Ex.D-1) as corroborative evidence against the appellants, though there was nothing in the letter (Ex.D-1) to indicate that the appellants ill-treated the deceased or physically or mentally tortured her. Reliance was also placed in this behalf on the decision of the Apex Court rendered in the case of State of Maharashtra v. Ashok Narayan Dandalwar reported in AIR 2000 SC 3568 and decision of this Court rendered in the case of Annapurnabai @ Bhoori Vs. State of M.P., .

7. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellants.

8. Perused the evidence on record. P.W-3 Ashwini Kumar, the father of the deceased, deposed in his evidence that three appellants used to beat the deceased for dowry and asked for motorcycle and fifty thousand rupees cash. According to P.W-3 Ashwini Kumar, whenever his daughter (deceased) came to his place one year prior to her death she told that appellants harassed her and gave her beating in order to coerce her to bring motorcycle and fifty thousand cash. As per the evidence of Ashwini Kumar (P.W-3), when he went to the place of appellants to take his daughter on the eve of Rakshabandhan, she told him that the three appellants would kill him if their demand for vehicle and cash was not fulfilled, and the appellants also declined to send his daughter with him until their demand for motorcycle and cash was fulfilled.

9. P.W-3 Ashwini Kumar was extensively cross-examined. He was also contradicted with his police statement (Ex.D-2) as to omission of aforesaid facts in his police statement. S.D.O.P. Kartar Singh (P.W-12), who recorded the police statement (Ex.D-2) of P.W-3 Ashwini Kumar, also admitted that Ashwini Kumar had not stated the aforesaid facts during his police statement regarding harassment and marpeet for dowry and demand for motorcycle and cash etc. P.W-3 Ashwini Kumar himself admitted in his cross-examination that he stated it for the first time before the Court that when he had gone to the house of appellants to take his daughter on the eve of Rakshabandhan, she had told that

appellants would kill her unless their demand for cash or vehicle was fulfilled. It is thus apparent that P.W-3 has made a definite improvement in his statement and has given an exaggerated or invented version regarding demand of dowry by the appellants and the harassment or cruelty to the deceased in order to fulfil their demand.

10. P.W-4 Ganga Devi, mother of the deceased also deposed in her evidence that deceased used to tell her that the three appellants were asking for fifty thousand cash and a vehicle and gave her beating in order to fulfil their demand. According to her, deceased had also written two letters in this behalf, but admittedly she did not produce those letters either before the Police or before the Court. P.W-4 Ganga Devi was also confronted with her police statement (Ex.D-4) as to the omission regarding demand of dowry, marpeet and cruelty by the appellants to the deceased in order to fulfill their demands. S.D.O.P. Kartar Singh (P.W-12) also admitted in his cross-examination that P.W-4 Ganga Devi did not state the aforesaid facts during her police statement (Ex.D-4).

11. Likewise, the statement made by Ramsagar Pandey (P.W-11), the uncle of the deceased to the effect that the deceased told him that appellant Harvilas was asking for vehicle and fifty thousand cash and the other appellants abused her and did not give her enough food, also does not find place in his police statement (Ex.D-5) with which he was confronted, and admittedly he made such statement before the court for the first time.

12. Thus, it is quite evident that the mother, father and the uncle of the deceased, namely, Ashwini Kumar (P.W-3), Ganga Devi (P.W-4), Ramsagar Pandey (P.W-11) as also Rajkumar (P.W-7) have given an exaggerated version against the appellants regarding demand of dowry by them as well as the harassment of the deceased in order to fulfill their demand. Had it been a fact, these witnesses would have given the same statement before the Police as well at the earlier point of time.

13. None of the aforesaid witnesses have given any direct evidence to the effect that the three appellants harassed the deceased or subjected her to marpeet or cruelty, physical or mental torture for dowry or otherwise deprived her of food etc. The evidence of almost all the witnesses in this regard is based on the oral complaints made to them by the deceased against the appellants regarding ill-treatment or demand of dowry by the appellants. As held by the Apex Court in the case of Gananath Pattnaik Vs. State of Orissa, such statements made by the deceased are not admissible in evidence for the offence punishable u/s 498A of IPC and has to be termed as being only hearsay evidence and cannot be relied upon for finding the guilt of the accused for offence u/s 498A of IPC.

14. Needless to point out that the statement made by Ashwini Kumar (P.W-3), the father of the deceased that appellants had declined to send his daughter with him unless their demand for motorcycle and cash was fulfilled, is not reliable due to omission of this fact in his police statement (Ex.D-2).

15. In fact, upon scanning the entire evidence on record it is found that there is no such direct, substantial, dependable and legal evidence on record that the three appellants ill-treated the deceased, deprived her of enough food or gave her beating in order to meet their demand for dowry or otherwise harassed her or subjected her to physical or mental torture and cruelty.

16. On the other hand, it transpires from the evidence of some of the prosecution witnesses like Virendra Kumar (P.W-5) and a neighbour Shyama Devi (P.W-6) that the appellants never maltreated the deceased and actually the deceased did not feel happy due to poor financial condition of the appellants. The mere fact that the deceased had to work for the cattle or look after them, cannot amount to ill-treatment or such cruelty so as to drive her to commit suicide. Even P.W-3 Ashwini Kumar also admitted in his cross-examination that the deceased never complained to him any discontent regarding working for the cattle.

17. As regards the letter (Ex.D-3), which has been relied upon by the trial court for coming to the conclusion about cruelty on the part of the appellants, there is nothing in it depicting even a slightest indication that appellants ill-treated the deceased or subjected her to cruelty or harassment in connection with demand of dowry or otherwise. Rather Ex.D-1 is a formal and general letter admittedly written by P.W-3 Ashwini Kumar to appellant No. 1 (Awdhesh Prasad Dwivedi) regarding exchange of well-being and other routine matters. The finding of cruelty arrived at by the trial court on the basis of this letter Ex.D-1 is totally misconceived.

18. In fact, there is no cogent, dependable or legal evidence on record so as to conclude beyond all reasonable doubt that appellants ill-treated the deceased or subjected her to mental or physical torture or cruelty or harassed her in connection with the demand of dowry or otherwise. No case u/s 498A was proved against the appellants beyond periphery of doubt. The conviction of the appellants u/s 498A of IPC, therefore, cannot be safely maintained.

19. Appeal is, therefore, allowed. The conviction of the appellants and sentence awarded to them u/s 498A of IPC are hereby set aside.

Appellants are on bail, their bail bonds shall stand discharged.