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(2011) 12 MP CK 0053

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 134/94

Bhagchand APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2011) 12 MP CK 0053

Hon'ble Judges : Rakesh Saksena, J;M.A Siddiqui, J

Bench : Division Bench

Advocate : Siddharth Datt, for the Appellant; R.S. Shukla P. L., for the Respondent

Final Decision : Allowed

Judgement

M.A. Siddiqui, J.—Appellant Bhagchand has preferred this appeal u/s 374(2) of Code of Criminal Procedure, 1973 (in short ''the Code'') alongwith his mother Appellant no.2 Ramabai (since dead), feeling aggrieved against the judgment dated 5.1.1994 passed by Additional Sessions Judge, Khurai in Sessions Trial No.341/92, convicting him u/s 304-B, 498-A, of Indian Penal Code (in short ''IPC'') and u/s 3 and 4 of Dowry Prohibition Act, 1961(for short ''the Act, 1961'') and sentencing him to rigorous imprisonment for life, R.I. for 3 years with fine of Rs.2,000/-in default S.I. for 3 months, R.I. for 3 years with fine of Rs.15,000/-in default S.I. for 1 year and R.I. for 2 years with fine of Rs.2,000/-in default S.I. for 3 months respectively.

2. Appellant no.2 Ramabai (mother of appellant Bhagchand) died during pendency of this appeal on 13.9.2008 so her name was deleted from the array of appeal and so far as appeal filed against her is concerned stands disposed of having been abated. This appeal, therefore, survives only so far as accused/ appellant Bhagchand is concerned.

3. Undisputedly co-accused persons Babloo alias Umakant, Raju alias Rajendra and Ramesh were acquitted by trial Court. Deceased Sangeeta was married to appellant Bhagchand on 12.3.1992 and she died an unnatural death due to burn by fire on 8.8.1992 (within five months from the date of marriage) in the house of the appellant.

4. In short, the prosecution case is that Sangeeta (since deceased) daughter of Shanti Devi (PW 2) was married to appellant on 12.3.1992. She was ill treated both mentally and physically for demand of dowry to bring cash of Rs.20,000/-. When demand of dowry was not fulfilled she was brutally beaten and was threatened to life, so, it is alleged that on 8.8.1992 in the evening Sangeeta committed suicide due to burn by fire as she was subjected to cruelty and harassment in respect of demand of dowry. She died forthwith. Information regarding her death was sent to her mother Shanti Devi (PW 2) at Jhansi, so she came at Bina and reported the matter to G.R.P. Bina vide Ex.P/1 in which Crime No.403/92 was registered. The matter was investigated and it was found that the appellant his mother and his brothers were treating the deceased with cruelty both mental and physical for demand of dowry to bring cash of Rs.20,000/-when demand of dowry was not fulfilled, she was brutally beaten and she was threatened to life. She died on 8.8.1992 due to burn by fire within five month from the date of marriage in matrimonial house. As unnatural death took place within seven years from the date of marriage, a criminal case u/s 304-B and 498-A of IPC and Section 3 and 4 of Dowry Prohibition Act,1961 was registered. During investigation, the appellant and other co-accused persons were arrested. After completing investigation the police filed the challan in the Court of Judicial Magistrate First Class where Criminal Case no. 605/91 was registered and in due course, the case was committed to the Court of Session for trial. The trial Court framed charges u/s 304-B, 498-A of IPC and U/s 3 and 4 of Dowry Prohibition Act against the appellant as well as other co-accused persons. The appellant and other co-accused persons abjured their guilt and pleaded false implication and claimed to be tried.

5. Prosecution examined 25 witnesses in support of its case and accused persons examined three witnesses in their defence in Court. Trial Court after appreciation of the evidence and documents available on record, acquitted three co-accused persons viz. Babloo alias Umakant, Raju alias Rajendra and Ramesh and punished the appellant and his mother Smt. Rama Bai, as aforesaid.

6. Aggrieved by the impugned judgment of conviction and sentence appellant and co-accused/appellant Ramabai (since dead) filed this appeal on the ground that appreciation of the evidence is not proper. Findings of the trial Court are based on surmises, conjectures and wrong presumptions. There are material contradictions, omissions and improvements in the statements of the prosecution witnesses. The conviction is bad in law. Sentence is too harsh. On the other hand, learned Panel Lawyer for the State supported the judgment of the trial Court and submitted that the evidence adduced by the prosecution was sufficient

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to establish the guilt of the appellant. Findings of conviction recorded by the trial Court were justified and called for no interference.

7. We have heard learned counsel for the parties at length and perused the original record including the impugned judgment and evidence available on record carefully.

8. Learned trial court has relied on the evidence of prosecution witnesses and we took the evidence into consideration. As far as death of Sangeeta occurred within 7 years from the date of marriage is concerned, learned trial Court has relied on evidence of Harprasad (PW 1) Shanti Bai (PW 2), Nathuram (PW 3) Francis Joshaf (PW 7), B.B. Quilton (PW 8), Kamta Prasad (PW 9), Stiphan (PW 10), Ramesh Kumar (PW 11), Charli (PW 12), Shanti bai (PW 14), Ramsunder (PW 15), Dr. Ashok Kumar Jain (PW 18), Dr. G.C.Motwani (PW 19), Shivram Singh Bhadoria (PW 24) and Kailash Kumar Photographer (PW 25) and has come to the right conclusion that the death had taken place within five months from the date of marriage which is within 7 years of marriage, the statutory period mentioned u/s 304-B IPC.

9. So far as demand of dowry is concerned, learned counsel for appellant submitted that Shanti Bai (PW 2) mother of deceased stated that Rs.20,000/-was demanded by Ramabai and appellant Bhagchand and Sangeeta bai was also threatened that if money will not be given then she will be killed. Learned counsel for appellant further submitted that this witness in her-chief categorically stated that she does not know for what purpose Rs.20,000/-was demanded by appellant. As per statement of Francis Joshaf (PW 7), Rs.20,000/-was demanded by the appellant. In paragraph 4 this witness specifically and categorically stated that Sangeeta told him that appellant Bhagchand was in debt and as he was unable to return debt so he was demanding Rs.20,000/-for return of debt.

10. Harprasad (PW 1) stated that before marriage Bhagchand, his elder brother Ramesh and his mother Shanti Bai (PW 2) demanded Rs.10,000/-and their demand of Rs.10,000/-was fulfilled at the time of engagement but this statement is missing in his police statement vide Ex.D/1. As far as demand of Rs.20,000/-is concerned, he stated that he did not know this thing that demand of Rs.20,000/-was made to return debt and when he was confronted with his police statement vide Ex.D/1 then he denied this in his statement at portion B to B that Sangeet told him that demand of Rs.20,000/-was made to return the debt. From the perusal of police statement vide Ex.D/1 and confronted portion it is very well clear that Harprasad (PW 1) told the police that Rs.20,000/-was demanded by appellant as debt or loan and not for dowry. These are the main witnesses in the case about demand of dowry on which learned trial Court believed for demand of dowry. Learned counsel for the appellant places reliance on the decision of Apex Court in the case Appasaheb and Another Vs. State of Maharashtra, in which it has been held that demand for money on account of financial stringency or for meeting urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. As per the

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definition of ''dowry'' as given in 1961 Act, giving and taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning.

11. In the instant case, since an essential ingredient of section 304-B IPC viz, demand for dowry is not established, in our opinion, the conviction of the appellant u/s 304-B of IPC can not be sustained. As there is no demand of dowry soon before the death of deceased, so no case u/s 304-B IPC from the prosecution was proved beyond reasonable doubt. Trial Court erred in holding guilty the appellant and his mother u/s 304-B of IPC and the appellant u/s 3 and 4 of Dowry Prohibition Act, 1961.

12. Learned counsel for the appellant further submitted that no case u/s 498-A of IPC is made out from the prosecution evidence. On the other hand, learned counsel for the State submitted that there is specific allegation in the statements of Shanti Bai (PW 2) and Francis Joshaf (PW 7) that Sangeeta Bai was treated with cruelty both mentally and physically by the appellant. We have perused the evidence of Shanti Bai (PW 2) who categorically stated that when Sangeeta visited her house she had no ornaments on her body and she stated that appellant Bhagchand used to drink liquor and he was in habit to beat her and threatened her to life. She further stated that at the time of Id when she (Sangeeta) came at Jhansi Sangeeta told her all these things before Francis Joshaf (PW 7). Francis Joshaf (PW 7) supported the version of Shanti Bai (PW 2) on the part of cruelty and stated that Sangeeta narrated that appellant used to tease her both mentally and physically.

13. Learned counsel for the appellant vehemently argued that Harprasad (PW 1), who is maternal uncle of deceased Sangeeta, stated that that Sangeeta did not inform him about ill-treatment from her in-laws rathar Sangeeta told him that she is Theek-thak (its O.K.). On the other hand, learned counsel for the State submitted that it is not necessary that every relative shall be informed about illtreatment in her matrimonial home. Sangeet was living Theek-thak (its O.K.) means she was not happy, otherwise she would have informed that she was living satisfactory. So this version of Harprasad (PW 1) is not very much importance and it can not be said that Sangeeta was not ill-treated by appellant.

14. Sangeeta committed suicide within five months from the date of marriage that too in the house of appellant, this fact, itself corroborates the version of Shanti Bai (PW 2) and Francis Joshaf (PW 7) that the appellant was treating Sangeeta with cruelty both mentally and physically. In our opinion, therefore,

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learned trial Court has rightly convicted the appellant u/s 498-A of IPC as such no interference is called for, so this appeal is partly allowed. Conviction and sentence of the appellant Bhagchand u/s 498-A IPC is hereby maintained.

15. Since we have found that the fact of demand of dowry and giving the same in the marriage is not proved by the prosecution beyond reasonable doubt, the conviction and sentence of the appellant u/s 304-B of IPC as well as u/s 3 and 4 of the Dowry prohibition Act, deserves to be set aside and is hereby set aside. Appellant is acquitted from the charges u/s 304-B of IPC and u/s 3 and 4 of the Dowry prohibition Act, but conviction of the appellant Bhagchand u/s 498-A of IPC and sentence of R.I. for 3 years with fine of Rs.2,000/-in default S.I. for 3 months is hereby maintained. The goods given at the time of marriage are said to be in the custody of Nazarat of trial Court. It be given to Shanti Bai (PW 2) as per directions in judgment of trial Court.

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