
(2016) 10 RAJ CK 0063

In the Rajasthan High Court

Case No : Criminal Appeal No. 208 of 1991.

Dhanraj S/o Shri Chetan Dass - Accused-Appellant @HASH State of Rajasthan

Date of Decision : 07-10-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (2017) 172 AIC 654 : (2017) 2 CriCC 231 : (2016) 4 CriLR 1884 : (2017) 1 RajCriC 53 : (2017) 2 RLW 886 : (2017) 1 WLC 300

Hon'ble Judges : Vijay Kumar Vyas, J.

Bench : Single Bench

Advocate : Shri Jaswant Singh Rathore, Advocate, for the Appellants; Ms. Meenakshi Pareek, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mr. Vijay Kumar Vyas, J. - This criminal appeal has arisen out of judgment dated 21.6.1991 passed by learned Special Court (Sati Prevention) and Additional Sessions Judge, Jaipur City, in Sessions Case No.22/1988, whereby appellants were acquitted from charge u/s 306 IPC and convicted for offence u/s 498A IPC and ordered each appellant to undergo two years" rigorous imprisonment with fine of Rs.100/-; in default of payment thereof, to further undergo one month"s simple imprisonment.

2. Brief facts giving rise to the appeal are that complainant - Bhagwan Dass (PW-1) submitted on 2.8.1987 a written report (Ex.P-1) before SHO, Police Station Adarsh Nagar, Jaipur, alleging inter alia that his daughter Maya (deceased) was married 11 years ago with appellant Dhanraj. She was often beaten by father-in-law (Chetan Dass), mother-in-law (appellant Jassi Devi), brother-in-law (looser) {appellant Dilip Kumar}, husband (appellant Dhanraj) and both sisters-in-law, as a consequence Maya was staying with complainant since last two months. During this period, her in-laws were not allowing three children of Maya to meet with their mother. On 29.7.1987 at about 10.00 PM, in-laws of Maya assured Bhagwan Dass that in future there would be no beating &

harassment and taken away Maya to their house. Today (on 2.8.1987) in the morning at about 7 O'clock nephew Dalpat Rai came and informed that Maya is lying dead in her house. Immediately, Bhagwan Dass rushed and reached at Maya's matrimonial house within half a minute and saw that Maya was lying dead on a cot. He has doubt that either Maya has been murdered by her in-laws or inlaws have created such situation that she was compelled to commit suicide. Committing suicide seems not possible because her in-law's house is just half a minute away from his house. Had she committed suicide by hanging, before getting her body down if he were called, he would not have suspected. His daughter has died in suspicious circumstances. Evidence has also been destroyed. On this report, formal FIR No.125/1987 (Ex.P-2) was registered at Police Station Adarsh Nagar, Jaipur. After due investigation, charge sheet was filed against Chetan Dass (father-in-law), Poonam (sister-in-law), Dilip Kumar (brother-in-law), Dhanraj (husband) and Jassi Devi (mother-in-law) for offence u/s 306 and 498A IPC.

3. Learned trial court charged them for offence u/s 306 and 498A IPC. All the accused denied the charges and claimed trial. Prosecution examined 15 witnesses and exhibited 14 documents. Accused were examined by the trial court u/s 313 Cr.P.C. They again stated the prosecution evidence to be false and wrong. Appellant Dhanraj stated that two months prior to incident, Maya was taken away to her parental house by her mother Krishna to attend engagement ceremony of daughter of Gyan Chand after seeking his permission. His father was blind since prior to marriage of Maya. Maya wanted to live separately. He denied because his father was blind and sister was yet to be married. He had purchased a house, Bhagwan Dass lived in that house for 2 years, thereafter he asked them to vacate the house. Due to this, Bhagwana Dass was annoyed. He also wanted to get her younger daughter married with accused's brother and the proposal was turned down. Maya wanted to get separated. Appellant Jassi Devi also stated that the proposal for marriage of younger daughter of Bhagwan Dass with her younger son Dilip Kumar, was turned down and house was also get vacated. Due to these reasons, they were annoyed. Appellant Dilip has also stated same thing. In all, 7 witnesses were examined and 5 documents were exhibited on behalf of defence. Learned trial court, after hearing both the parties, vide impugned judgment convicted and sentenced the appellants, as stated above. By the same judgment, accused Chetan Das and Ms Poonam were acquitted of all the charges.

4. Learned counsel for the appellants submits that the trial court did not find the allegations of demand of dowry, proved. On the basis of evidence adduced by the prosecution, learned trial court has observed that only bone of contention, between Maya on one hand and her in-laws on the other hand, was wish of Maya to live separately.

5. Learned counsel for the appellants submits that Bhagwas Dass (PW-1) - the complainant and father of the deceased Maya, has stated in cross examination

that Maya was happy with her husband. She never complained against her husband. Other witnesses of the prosecution have also admitted this fact.

6. Learned counsel for the appellants submits that Kishore Kumar (PW-6) - brother of the deceased, has stated that Maya was harassed and usually asked to bring some wealth from her parents but none of other witnesses examined by the prosecution has corroborated this fact.

7. Learned counsel further submits that Smt. Krishna (PW-12) - mother of the deceased, has stated that father-in-law of the deceased was of loose character. He attempted to ravish her several times. The deceased complained the same to her other in-laws but all in vain. One or two more witnesses of the prosecution have stated such thing but the trial court has disbelieved this reason for harassment given to the deceased.

8. Learned counsel for the appellants submits that the incident took place after 13 years of the marriage, in between whereof, three children were born.

9. Learned counsel for the appellants further submits that as per prosecution - two months prior to the incident, Maya was brought by her mother to her parental house and stayed there and just two days before the incident, on assurance of not beating and annoying further, given by sister of father-in-law of the deceased, Maya was sent back to her in-law's house. There is no evidence from the prosecution as to what happened during these two days, which compelled Maya to commit suicide. Prosecution has failed to prove any wilful conduct of the appellants of a nature which driven Maya to commit suicide. The evidence adduced by the prosecution is at the most indicating some harassment, misbehaviour or manhandling with Maya. But after two months cooling period when Maya stayed with her parents, what wilful conduct of the appellants during the span of two days prior to the incident, drove Maya to commit suicide, has not been averred or substantiated by the prosecution. The wilful act or conduct as envisaged under Explanation (a) to Section 498A IPC, ought to be the proximate cause in order to bring home the charge u/s 498A. Learned counsel placed reliance on *Laxmi Bai v. State of M.P.*, 2000 Cri.L.J.3597, *Nilakantha Pati v. State of Orissa*, 1995 Cri.L.J.2472, *Girdhar Shankar Tawade v. State of Maharashtra*, AIR 2002 SC 2078 and *Ghusabhai Raisangbhai Chorasaya and Ors. v. State of Gujarat*, AIR 2015 SC 2670.

10. Per contra, learned Public Prosecutor submits that harassment, beating, manhandling, misbehaviour and humiliation, cumulatively compelled Maya to commit suicide is well proved from the evidence adduced by the prosecution. There is nothing on record to disbelieve the evidence of the prosecution. A decision to commit suicide by Maya even after lapse of 11 years of the wedlock, itself, is indicative about intensity of wilful ill-conduct of her in-laws. Only in severe adverse circumstances, she might have taken decision to leave in this world, her three children orphan.

11. Learned Public Prosecutor submits that the trial court has committed no

error, perversity or illegality in holding the appellants convict.

12. I have given thoughtful consideration to the rival submissions and gone through whole of the material available on record.

Section 498A, Indian Penal Code is as follows :-

"498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

13. Kishore Kumar (PW-6) - brother of the deceased has stated that Maya was harassed and usually asked for wealth from her parents. But none of the other witnesses examined by prosecution, has given any evidence about unlawful demand of dowry. Learned trial court has given the finding that though Maya was subjected to harassment but that was not for any illegal demand of money or dowry, etc. Learned trial court has acquitted the appellants from the charge of 306 IPC. Thus, only point for consideration remains as to whether as per explanation (a) given in Section 498-A IPC, deceased Maya was subjected to cruelty i.e. any wilful conduct of such a nature as was likely to drive her to commit suicide.

14. It is an undisputed fact that Maya was married 11 years prior to her death. During this long period of 11 years, three children were borne. Bhagwan Dass (PW-1) - father of the deceased and Smt. Krishna (PW-12) - mother of the deceased, have admitted that Maya never made any complaint of any sort against her husband Dhanraj. On the basis of evidence adduced, learned trial court has not believed the evidence rendered by Smt. Krishna (PW-12) about harassment given by Chetandass - father-in-law of the deceased, for the purpose of seducing her.

15. Learned trial court has believed that some illtreatment, both physical and mental, was given to Maya during her married life. After perusing the evidence of prosecution, I also find that there was some ill-treatment to Maya. However, the offence punishable u/s 498A of the Indian Penal Code can be made out only after it is proved that a woman was driven to commit suicide on account of such ill-treatment.

16. Apex Court, in Girdhar Shankar Tawade's case (supra) in para No.18, has observed as under : -

"18. xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx. In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498A."

17. Almost all the witnesses of prosecution have corroborated this fact that two months prior to death i.e. dated 2.8.1987, the deceased had come to her parents house and was living with them. Only on 29.7.1987, when a sister of Chertandass assured that in future Maya would not be subjected to any ill-treatment, she was permitted to take back Maya to her matrimonial house. None of the witness of prosecution has stated anything about any wilful conduct or ill-treatment given by her in-laws to Maya during these last four days of her life. Despite of some frictions, the married life continued for 11 years. Two months prior to death, Maya was living with her parents, where she was not supposed to meet any ill-treatment from her in-law's side. In such a situation, no reasons for committing suicide have been culled out by prosecution within a reasonable proximate duration. The ill-treatment, both physical & mental and misbehaviour with which Maya was subjected during long span of her married life of 11 years, may depict a reprehensible conduct. However, such misbehaviour or illtreatment was not proximately prior to her death. Therefore, it cannot bring home the charge of committing cruelty as explained in explanation (a) to Section 498A IPC.

18. In the result, the order of learned trial court regarding conviction and sentence passed against the appellants for the offence u/s 498A IPC is not sustainable. Hence, the appeal is allowed. The order dated 21.6.1991 of conviction and sentence passed by learned trial court is set aside.

19. Keeping in view, however, the provisions of section 437-A of the Code of Criminal Procedure, accused appellants Dhanraj, Dilip Kumar and Jassi Devi are directed to forthwith furnish a person bond in the sum of Rs.20,000/- each and a surety bond in the like amount, before the Deputy Registrar (Judicial) of this Court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against this judgment or on grant of leave, the said appellants, on receipt of notice thereof, shall appear before the Supreme Court.