

(2014) 05 MP CK 0198

In the Madhya Pradesh High Court

Case No : Criminal Appeal Nos. 103/1999 and 507/2003

Dileep

APPELLANT

Vs

State of M.P.
 State of M.P. Vs Ashok Kumar

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 378

Evidence Act, 1872 — Section 113B

Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2014) 3 MPHT 283

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : Madhukar Kulshreshtha, Advocate and Raghvendra Dixit, Public Prosecutor, Advocate for the Appellant; Raghvendra Dixit, Public Prosecutor and Sandeep Kulshreshtha, Advocate for the Respondent

Judgement

B.D. Rathi, J.—The present judgment shall govern the disposal of both the cases (Cri. A. No. 103/1999 and Cri. A. No. 507/2003). Criminal Appeal No. 103/1999 u/s 374 of the Code has been preferred by the appellant/accused against the judgment of conviction and sentence dated 11-2-1999 passed by learned First Additional Sessions Judge, Bhind in S.T. No. 93/1998 whereby the appellant has been convicted for the offence punishable u/s 304B of IPC and sentenced to undergo 10 years" rigorous imprisonment. Criminal Appeal No. 507/2003 u/s 378 of the Code has been preferred by the State against the same judgment whereby respondents (remaining accused persons) have been acquitted of the offences punishable under Sections 304B of Indian Penal Code (in short "IPC"). The prosecution case in brief, is that the marriage of accused Dileep and Kalpana had taken place on 26-5-1994 at Bhind. After marriage, Kalpana started living at Village Kanathar and prior to death, she was living at the matrimonial house situated at Mehgaon, District Bhind. During life time and prior to this case, on the written report of Kalpana (Exh. P-16) made against her in-laws, the case for offence u/s 498A of IPC was also registered as Crime No. 123/1997 at Police

Station, Mehgaon, District Bhind. The accusation of prosecution in this present case is that the accused persons used to demand dowry and on non-fulfillment of demand of dowry, the accused persons have started harassing Kalpana mentally and physically. On the information given by mother of deceased, Rampyari (P.W. 7) in regard to unnatural death of Kalpana due to burn injuries, Merg No. 19/1997 was registered on 20-7-1997 and soon thereafter, the then SDO (P), Mehgaon reached at the place of incident. Upon enquiry in the Merg, FIR (Exh. P-12) was lodged at Crime No. 199/1997 at Police Station, Mehgaon, District Bhind for the offence punishable under Sections 304B and 34 of IPC on 10-8-1997. After completion of investigation, charge-sheet was filed against the accused persons for the said offences.

2. During trial, the accused persons pleaded not guilty to the charges framed under Sections 304B and 34 of IPC and contended that they had been falsely implicated. It is imperative to note that the accused Patiram (father-in-law of deceased) had died during pendency of trial.

3. Leave to appeal sought by the State has been refused for other accused persons except present respondents. Respondent No. 1 (Ashok) has died during pendency of appeal, therefore, the names of all these persons have been deleted from the array of respondents/accused vide order dated 9-5-2011 and 10-10-2003. In this way, State appeal is being decided only for respondent Nos. 2 and 3.

4. By preferring Cri. A. No. 507/2003, learned Public Prosecutor submitted that learned Trial Court has not properly appreciated the entire evidence and material available on record though the case has been proved beyond reasonable doubt by cogent and reliable evidence thus the Trial Court has committed error in acquitting the respondents/accused persons. Prayer was also made that the appeal be allowed and accused persons/respondent Nos. 2 and 3 be convicted and sentenced accordingly.

5. On the contrary, Shri Sandeep Kulshreshtha, learned Counsel appearing on behalf of respondent Nos. 2 and 3/accused submitted that the judgment of acquittal for the offence punishable u/s 304B of IPC is well-merited. Prosecution has completely failed to prove its case beyond reasonable doubt, therefore, in acquittal no interference is called for. By supporting the contention of learned Counsel for respondent Nos. 2 and 3, Shri Madhukar Kulshreshtha (Counsel in Cri. A. No. 103/1999) submitted that learned Trial Court has committed error in convicting the appellant for the offence punishable u/s 304B of IPC and sentencing him to suffer 10 years" RI as no case is made out against him.

6. To bring home the charges, prosecution has produced as many as 17 witnesses, namely, Vijayram (P.W. 1), Vishwanath Singh (P.W. 2), Ramsingh (P.W. 3), Pancham Singh (P.W. 4), Ladeta Bai (P.W. 5), Bachharam (P.W. 6), Rampyari (P.W. 7), Akhilesh (P.W. 8), Kunwarpal (P.W. 9), Balram (P.W. 10), Ramswaroop (P.W. 11), Lajjaram (P.W. 12), Narayan Datt (P.W. 13), Maniram (P.W. 14), Umesh

Kumar Ikka (P.W. 15), Dr. B.S. Tomar (P.W. 16) and Indra Prakash Arjariya (P.W. 17). Accused persons have also examined as defence witness, namely, Kamlesh Kumar (D.W. 1) and Rajaram Swamkar (D.W. 2).

7. Having regard to the arguments advanced by learned Counsel for the parties, we have perused the entire evidence and material available on record, as well as the impugned judgment of Trial Court.

8. It is well-settled that the judgment of acquittal should not be disturbed unless the conclusion drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable. Similarly, if two views are possible then the view in favour of accused should be taken into consideration. Under criminal jurisprudence, accused do have the right to get benefit of doubt and it is the prosecution, who has to prove its case beyond reasonable doubt, if it is not provided otherwise by law.

9. Learned Public Prosecutor submitted that as per the prosecution case since Kalpana was subjected to cruelty by all the accused persons and they all used to beat her, she had lodged the FIR on 25-4-1997, which was registered as Crime No. 123/1997 (Exh. P-16) at Police Station, Mehgaon. Thereafter, one Panchayat was also organised by the parties to resolve the dispute in regard to cruel some behavior and demand of dowry, these circumstances in themselves were sufficient to prove that all the accused persons used to bear Kalpana and she was subjected to cruelty just before her unnatural death, therefore, the presumption as provided u/s 113B of Indian Evidence Act should be drawn against all the acquitted accused persons also.

10. On perusal of impugned judgment, it is clear that learned Trial Court has discarded the entire evidence of prosecution witnesses on the ground that their evidence was full of omissions, contradictions and exaggerations in the following manner:--

(i) In Para. 10, learned Trial Court has held that the FIR (Exh. P-16) was lodged by Kalpana and Crime No. 123/1997 was registered, after investigation, charge-sheet (Exh. P-17) was filed. In this report, it was not mentioned by Kalpana that all the persons were involved in her harassment for demand of dowry and also that in what manner the offence was committed with her u/s 498A of IPC, on this point, the evidence of parents and brother of Kalpana, namely, Vijayram (P.W. 1), Rampyari (P.W. 7) and Akhilesh (P.W. 8) was not found trustworthy because of full with contradictions, omissions and exaggerations.

(ii) In Para. 11, it was found by the Trial Court that Kunwarpal (P.W. 9) and Balram (P.W. 10) both have turned hostile, but from their version and the version of other witnesses, namely, Lajjaram (P.W. 12) and Maniram (P.W. 14) and Bachchuram (P.W. 6), it is clear that Panchayat was called by the parties to resolve the dispute and, thereafter, Kalpana has died under suspicious circumstances. In this Panchayat, it was also discussed that Kalpana was never subjected to cruelty. She was living separately with her husband.

(iii) In Para. 12, learned Trial Court has held that the conversation took place between the parties in Panchayat in regard to demand of dowry and cruelty by accused persons towards Kalpana and for this purpose the witnesses, namely, Vijayram (P.W. 1), Rampyari (P.W. 7), Bachchuram (P.W. 6), Maniram (P.W. 14), Lajjaram (P.W. 12), Kunwarpal (P.W. 9) and Balram (P.W. 10) were produced, but the evidence of these witnesses was not found to be befitting because of full with contradictions, omissions and exaggerations.

(iv) In Paragraph 9, learned Trial Court has further held that the evidence of witnesses was not reliable on the point that Kalpana was subjected to cruelty on non-fulfillment of demand of dowry made by the accused persons. Further, it has been held in Para. 14 that the accused Kailashi Bai W/o. Baijnath, Mahesh Kumar, Ramswaroop alias Paltoo, Vaikunthi and her son Rajesh were living separately in Mehgaon, District Bhind, therefore, they had not participated in the said crime. In FIR (Exh. P-12) only doubt was raised against Ramswaroop, Rajesh, Vaikunthi Bai, Mahesh Kumar and Kailashi Bai and this fact was ratified by the Investigating Officer (P.W. 17).

(v) At the bottom of Para. 16 of impugned judgment, it has been held by the Trial Court that from perusal of evidence of prosecution, it was not clear that after how many days from marriage, the demand of motorcycle in dowry was made by the accused persons and similarly it was also not proved that on which date Kalpana was assaulted on the pretext of non-fulfillment of demand of dowry.

(vi) In Paragraph 17, it was held by the Trial Court that the maternal uncle Bachchuram (P.W. 6) deposed in his evidence that after marriage of Kalpana for 2-3 years he had never gone to the house of Vijayram, father of deceased, therefore, the statement of Bachchuram that Kalpana used to complaint in relation to cruelty and demand of dowry against the accused persons become suspicious.

(vii) In Paragraph 18, learned Trial Court has held that the prosecution witnesses have stated that acid was thrown on the face of Kalpana, but, this fact did not find place in the FIR (Exh. P-16) lodged by Kalpana herself, therefore, on this points also, the statement could not be relied on,

(viii) At the bottom of this para, further learned Trial Court has held that on appreciation of evidence of prosecution it was cleared that the accused persons (except Dileep, Patiram and Ashok) were falsely implicated because in FIR (Exh. P-16) other accused persons were not named by Kalpana. This FIR was lodged on 25-4-1997, 3-4 months prior to the date of death of present crime. The statement of Rampyari (P.W. 7) mother of Kalpana was false and given in order to take revenge.

(ix) In Para. 19, it was held by the Trial Court that on perusal of FIR (Exh. P-16), lodged by Kalpana 3-4 months prior to the date of incident of this case, it seems that she was subjected to cruelty by Dileep, Patiram and Ashok, therefore, other accused persons have not committed any offence and they have been falsely

implicated otherwise name of others were also mentioned in FIR. So far as these three persons were concerned, Patiram had died during trial and Ashok has been acquitted by the Trial Court as he was living separately for doing service in Panchayat Department at Guna and in Paragraph 26 after appreciation of evidence, it has been held by the Trial Court that Kalpana was subjected to cruelty by Dileep only on non-fulfillment of demand of dowry soon before her unnatural death, therefore, only Dileep is liable for the offence punishable u/s 304B of IPC and presumption of Section 113B of Evidence Act can be drawn against Dileep only.

11. Now the core question before us for consideration is, whether the Trial Court was right in discarding the entire evidence of prosecution on the basis of omissions, contradictions and exaggerations and whether the prosecution has successfully proved the case against the accused-Dileep beyond reasonable doubt.

12. On perusal of entire evidence available on record, it is clear that the evidence of prosecution witnesses is full of omissions, contradictions and exaggerations, therefore, we are of the considered view that such type of evidence cannot be relied on. Thus, learned Trial Court has not committed any error in acquitting the respondents (of Cri. A. No. 507/2003), after disbelieving the evidence of prosecution witnesses.

13. Now it has to be seen whether the conclusion arrived at by learned Trial Court against Dileep is sustainable or not. For that purpose, the judgment passed in Criminal Case No. 1835/1997, State of M.P. vs. Ashok and others on 29-8-2000 by the Court of JMFC, Mehgaon is relevant. That criminal case was emanated from the FIR (Exh. P-16) lodged by Kalpana herself for the offence punishable u/s 498A of IPC. By this judgment, all the three accused persons named therein including Dileep were acquitted by the Trial Court and admittedly this judgment has attained finality. The entire evidence of prosecution witnesses were discarded by the Trial Court, because, it was full of omissions, contradictions and exaggerations. Apart that the parents were present during autopsy of Kalpana, but they have not lodged any report against the accused persons. Vijayram (P.W. 1) deposed in Para. 11 of his evidence that his statement was recorded by police after 2-3 months from this incident.

14. As regards conviction of accused-Dileep, we will have to see that Criminal Case No. 1835/1997 emanated from the FIR (Exh. P-16) lodged by Kalpana had failed down against all the accused persons including Dileep by the Court of JMFC, Mehgaon, vide its judgment dated 29-8-2000, as the allegations made by Kalpana were not found proved and since this judgment of acquittal has remained unchallenged, therefore, it has attained finality. Apart that, in Paragraph 22, Vijayram (P.W. 1) father of deceased deposed that at the time of post-mortem, he was present, but has had never asked anyone that how and who has murdered his daughter and he has not lodged any complaint against the accused persons in relation to cruelty committed towards Kalpana, on the

contrary it was stated by him that after 2-3 months of incident, his statement was recorded by the police, in such circumstances, it is clear that due to emotions towards his daughter, statements were given by parents and prosecution has registered the case, but has failed to prove its case beyond reasonable doubt. This being so, we are of the considered view that conviction of Dileep is also liable to be set aside.

15. It was also submitted by learned Public Prosecutor that during autopsy three ante-mortem injuries were found present on the body of Kalpana. It shows that soon before death she was subjected to cruelty by all the family members.

16. In consideration of above contention, on perusal of record it is clear that the marriage of Kalpana (since deceased) was solemnised on 26-5-1994 and within 7 years of her marriage, she died due to burn injuries in unnatural circumstances. It is also an admitted fact that her dead-body was found lying on the ground under the cart because the rows of cart had also burnt. During autopsy, it was found by Dr. B.S. Tomar (P.W. 16) that three ante-mortem injuries were found present on the body of Kalpana namely:--

(i) One simple injury was found at backside of shoulder of deceased.

(ii) Second injury at the middle of back.

(iii) Third injury at the maxilla of face.

All the injuries were caused by hard and blunt object.

17. On perusal of these simple injuries and opinion of doctor, we are of the considered view that due to fire, rows of cart might have been burnt, resultantly, Kalpana might have been fallen on the ground due to that above mentioned three injuries might have caused, therefore, in absence of other evidence, it cannot be presumed that only due to these injuries, she was subjected to cruelty soon before her death by the accused persons.

18. Therefore, in absence of cogent and reliable evidence, it cannot be held that Kalpana was subjected to cruelty soon before her unnatural death. Therefore, neither presumption is available u/s 113B of Indian Evidence Act against the appellant or respondents nor any other evidence is available to connect them with the offence.

19. For the above discussions, in conclusion, the appeal preferred by the State (Cri. A. No. 507/2003) against acquittal of respondents fails and is hereby dismissed having no substance. The appeal preferred by Dileep against the judgment of conviction and sentence succeeds and is hereby allowed. Appellant-Dileep is on bail, his bail bonds stand discharged.

Copy of this order along with record be sent to the Trial Court for information and necessary compliance.