
(2017) 04 MP CK 0058
In the Madhya Pradesh High Court
Case No : 708 of 1998

Ellora Paper Mills Limited

APPELLANT

Vs

State of M.P. & Ors

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 120B](#), [Section 302](#), [Section 201](#), [Section 304B](#) - Punishment of criminal conspiracy - Punishment for murder - Causing

Citation : (2017) 04 MP CK 0058

Hon'ble Judges : S.K. Gangele, Anurag Shrivastava

Bench : Single Bench

Advocate : Prakash Gupta

Judgement

1. The appellant/State has preferred this appeal under Section 378(1) Cr.P.C. against the judgment of acquittal dated 04.08.1997, recorded by IV Additional Sessions Judge, Sagar (M.P.) in S.T. No.322/1996, whereby the respondents have been acquitted for the offences punishable under Sections 302, 304-B r/w Section 120-B of IPC.

2. The case of the prosecution in brief is that the deceased Asha Bai was married to accused Bablu in the year 1995. After marriage, she was living in village Mahoruni alongwith her husband and father-in-law Jagu, Jeth (brother-in-law) Govind, Jethani Jashoda Bai and Devar (brother-in-law) Bablu and Chota. At the time of marriage, a demand of Motorcycle was made by the accused persons, but due to financial restrain the father of the deceased Ram Gopal (PW-4) had given Bicycle. After a few months of marriage the accused persons had started making demand of Motorcycle and T.V. from the deceased and started harassing her. She was subjected to cruelty by accused persons who usually pressurize her by beating and assaulting in order to fulfill their demand. The deceased had informed her parents about cruel treatment of accused persons. On 30.04.1996, it is alleged by the prosecution that accused persons had set the deceased on

ablaze by pouring kerosene oil on her. She was taken to Telai Hospital, Sagar by a neighbour Hari Narayan. Next day on 01.05.1996, she had expired due to burn injuries. A merge intimation (Ex.P/2) has been recorded in Police Station, Kotwali, Sagar on the intimation of Doctor, panchanama of dead body was prepared and sent for postmortem. One of the relative of Ramgopal, who lives in the Village Mahoruni, had sent a letter to father of the deceased Ramgopal on 01.05.1996 intimating him that the deceased is in serious condition admitted in the hospital. Ram Gopal alongwith other family members reached on the hospital and found her daughter dead. The police conducted inquest before them. During inquest, the police prepared the spot map and seized the kerosene stove, burnt cloths from the spot and recorded the statement of witnesses. Later on Ram Gopal sent a written complaint to Superintendent of Police on 06.05.1996 alleging that the accused persons had killed his daughter by setting her ablaze by pouring petrol for demand of dowry and the local police is not taking proper action against the accused persons. Under the direction of S.P. a FIR (Ex.P/6) has been recorded on 18.05.1996 on the basis of aforesaid complaint (Ex.P/5) in Police Station City Kotawali, Sagar and offence under Section 304-B of Penal Code was registered. During investigation spot map was prepared, the statement of witnesses recorded and after usual investigation the charge sheet under Sections 302, 304-B, 201 of Penal Code has been filed in the Court.

3. The trial Court has framed charges under Sections 302, 304-B, 201 of IPC against the accused persons. They abjured guilt and stated false implication by the complainant and other family members of the deceased. The prosecution has examined ten witnesses. The accused persons have given two witnesses in their defence. The trial Court after conclusion of the trial by passing the aforesaid judgment acquitted the accused persons/respondents from alleged offences.

4. It is argued by the learned Panel Lawyer for the appellant/State that from the evidence of prosecution witnesses it is amply proved that the deceased was subjected to cruelty for demand of dowry by the accused persons. The circumstances show that she was murdered by the accused persons. Accused persons conduct corroborates above facts as they had not taken the deceased for treatment and they had avoided to give proper information to the parents of the deceased where the deceased was admitted for treatment. The trial Court without proper appreciating the evidence has wrongly arrived at the conclusion that the offence against the accused persons is not proved beyond reasonable doubt. The findings of the trial Court is erroneous and illegal. Therefore, appeal may be admitted and accused persons may be convicted for alleged offences.

5. Considering the arguments advanced by the learned counsel for the appellant and on perusal of the record, it appears that it is not disputed that the deceased Smt. Asha Bai was the wife of accused Bablu. The marriage was solemnized in the year 1995 and after marriage, deceased was living in the Village Mahoruni with her husband and other accused persons, who are her father-in-law, mother-in-law, brother-in-law and sister-in-law. It is also not disputed that on

30.04.1996, the deceased had sustained burn injuries and taken to Tilli hospital, Sagar, for treatment by neighbour Harinarayan (PW-2). She was admitted there and during the treatment, on 01.05.1996 she had expired. Harinarayan (PW-2) gave information about the death of deceased at police station Kotwali, Sagar, and a Merg intimation Ex.P-2 was registered and police prepared the Panchnama Ex.P-8 of dead body of the deceased and sent it for postmortem. Doctor A. Kastwar (PW-3) conducted the postmortem and in his Court statement deposed that the deceased was died due to asphyxia and there was post-mortem, burn injuries found on the dead body. There was smell of kerosene oil coming out from the body of deceased. The above statement is also corroborated by postmortem report Ex.P-3 given by the doctor. It is opined by the doctor A. Kastwar that after the death of deceased, her body was set ablaze. Thus, from the post-mortem report and evidence of doctor A. Kastwar, it is rightly found proved by the trial Court that the deceased was died due to asphyxia. Here it is also to be noted that the cause of asphyxia is not clearly mentioned by the doctor. There was no sign of strangulation. In query report Ex.P-4, a panel of three doctors clearly opined that no definite cause of asphyxia could be detected in the post-mortem.

6. It is evident that the deceased was died in unnatural circumstances within seven years of marriage. The prosecution has examined parents and uncle of the deceased to prove the demand of dowry and cruel treatment with the deceased by accused persons. Ramgopal (PW-4) and Leelabai (PW-5) are the parents of deceased. Ramgopal (PW-4) deposed that after a few months of marriage, accused persons had started making demand of motorcycle and television from the deceased and to pressurize her, they subjected her to cruelty by beating and harassing her. Whenever, the deceased comes to her parent's house, she had narrated about the demand of dowry and cruel treatment of accused persons. Ramgopal tried to explain his financial condition and persuaded the accused persons to avoid making demand and ill-treating the deceased and gave a bicycle, but they continuously made demand of motorcycle and television. Sometime before the death of deceased, Ramgopal, his son Rakesh and brother Sukhlal tried to bring the deceased to her parental home, but accused persons refused to send the deceased. Similar facts have also been narrated by the mother of deceased Leelabai (PW-5) and uncle Sukhlal (PW-6) in their statements. In their cross- examination they have stated that they mentioned these facts to Police officer at the time of Merg enquiry.

7. There are material discrepancies appears in the statements of PW-4, PW-5 and PW-6 from their police statements recorded during inquest. Virendra Kumar Birthare, Sub-Inspector (PW-1) in his statement deposed that after the death of deceased, he had conducted the inquest and during this, he had recorded the statements Ex.D-2, Ex.D-4 and Ex.D-6 of Ramgopal, Leelabai and Sukhlal respectively. Ramgopal, Leelabai and Sukhlal had also admitted this fact that during inquest the police had recorded their statements. It is strange to notice that in the statements Ex.D-2, Ex.D-4 and Ex.D-6, which had been recorded on

the very day of death of deceased i.e. 01.05.1996, the witnesses had not stated anything about the demand of dowry and cruel treatment given by the accused persons to the deceased. Ramgopal and Sukhlal in their statements Ex.D-2 and Ex.D-6 had categorically stated that deceased was living happily with the accused persons and she had never made any complaint against them. Sheelabai in her statement Ex.D-4 had stated that the deceased had told her only about the dispute with her Jethani for partition of the property. Due to quarrel over property the deceased and her husband were prepared to live separately.

8. The complainant Ramgopal had made a written complaint Ex.P-5 to Superintendent of police .This report was typed by an advocate. There are material omissions in this report also.

9. The prosecution has examined the witnesses Vimla Bai (PW-7), the neighbour and landlord in whose house the deceased was living on rent and also the neighbor Harinarayan (PW-2) , who reached on the spot just after the incident and drowsed the fire. Both the witnesses had categorically deposed that when they reached on the spot, the deceased was almost burnt, the smoke was coming out and children were trying to drowse the fire. There was no body present in the house except children. The accused persons had gone to their field for agricultural work. The witnesses had denied the fact of cruel treatment and demand of dowry by accused persons also. Other prosecution witness Virendra Sing (PW-8) deposed that the deceased was living happily with accused and she had never made any complaint against them. These witnesses are resident of same village and they have not been declared hostile by the prosecution, therefore, there testimony can not be disbelieved.

10. Thus, from above discussions it appears that at the time of incident, accused persons were not present in the house. The statements of PW-4, PW-5 and PW-6 against respondents/accused persons regarding demand of dowry and practicing cruelty with the deceased are also doubtful in view of their police statements Ex.D-2, Ex.D-4 and Ex.D-6, wherein the complete omission of aforesaid facts. Thus, their statements becomes doubtful and cannot be relied upon without corroboration. Other prosecution witnessess PW-2, PW-8 and PW-7 are not supporting the prosecution and stating that the deceased was living happily with the accused persons. Therefore, considering the overall evidence adduced by the prosecution, this fact is not proved beyond reasonable doubt that soon before the death, the deceased was subjected to cruelty for demand of dowry by the accused persons. It is also not proved that the accused persons have committed murder of the deceased. The trial Court on appreciation of evidence rightly found the charges levelled against the accused persons not proved. The findings of trial Court appears to be reasonable and correct. Therefore, there is no ground to interfere in aforesaid findings of the trial Court.

11. Since the alleged offence against the accused persons are not proved beyond reasonable doubt. Therefore, they have been rightly acquitted by the trial Court.

12. Thus, the appeal has no substance and is hereby dismissed.