
(2009) 05 SHI CK 0034
In the High Court Of Himachal Pradesh

Nand Lal and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

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

Citation : (2010) 6 SLR 535

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The appellants have come in appeal against judgment dated 1.3.2002 of learned Sessions Judge, Hamirpur in Sessions trial No. 6 of 1999 convicting and sentencing them u/s 498-A IPC with a direction to undergo three years rigorous imprisonment and fine of Rs. 5000/- each, in default of payment of fine to undergo further rigorous imprisonment for a period of three months. Out of the amount of fine, Rs. 7000/- was ordered to be paid as compensation to PW-1 Roshan Lal father of the deceased.

2. The prosecution case, in brief, is that on 7.2.1998 PW-1 Roshan Lal complainant had informed Police Station, Hamirpur on telephone that his daughter Seema Devi aged 19 years married to Madan Singh was found dead in the house of accused persons, he alongwith respectables of the area went there on being informed. This information was entered in rapat roznamcha vide rapat No. 3 Ex.PW-11/A. On receipt of information, PW-11 Hari Chand, SI/SHO, Police Station, Hamirpur alongwith others rushed to the spot and recorded statement Ex.PA of PW-1 Roshan Lal. Thereafter, FIR Ex.PW-5/A was registered.

3. The case was investigated by PW-11 Hari Chand, who prepared inquest report Ex.PW-1/A and spot map Ex.PW-11/B, the recoveries were made, letter produced by PW-3 was recovered through recovery memo Ex.PW-3/A. The letter Ex.PH, register Ex.P-12 were taken into possession, post-mortem report Ex.PW-13/A

and Chemical Examiner report Ex.PW-9/A were also taken. The letters Ex.PH and Ex.PB alongwith specimen handwritings were sent to Govt. Examiner of questioned documents for opinion and the opinion Ex.PW-12/B was obtained. On completion of investigation, challan was presented in the Court against the appellants and their son Madan Singh, all of them were charged for offence punishable under Sections 304B and 498-A IPC, they pleaded not guilty. The prosecution has examined 13 witnesses. The statements of accused were recorded u/s 313 Cr.P.C., they led no evidence in defence. The learned Sessions Judge convicted the appellants as noticed above but acquitted Madan Singh, hence the appeal.

4. I have heard Mr. M.S. Chandel, Senior Advocate, learned Counsel for the appellants and Mr. Anshul Bansal, learned Additional Advocate General for the State and have also gone through the record. On behalf of the appellants, it has been submitted that the learned Sessions Judge has not properly appreciated the material on record while convicting and sentencing the appellants. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Madan Singh, husband of the deceased has been acquitted but on the same evidence, the appellants have been wrongly convicted.

5. Ex.PA is the statement of PW-1 Roshan Lal father of deceased Seema Devi before police in which he has stated that marriage between Seema Devi and Madan Singh was solemnized on 9.5.1997. Madan Singh was in Army and was on leave. Seema Devi was being ill-treated by her father-in-law, mother-in-law and husband since she was married, they used to beat her. She used to tell her mother and grand-mother that her father-in-law, mother-in-law and husband used to allege that she had aborted before marriage and walks like a mule, she would not bear a child, they would perform second marriage of their son. He persuaded Seema Devi and had sent her to her in-laws house. On 6.2.1998 Nand Lal at about 11.30 p.m. informed him on telephone that Seema Devi had consumed "baygon", he asked him the reason, he told that the husband and wife had some quarrel. He reached Gehra and found that his daughter had died and was lying on the bed in the room. He had informed the SHO on telephone in the morning.

6. Ex.PB is the recovery memo of "baygon" insecticide. Ex.PB/1 is the recovery memo of towel and bed sheet, Ex.PC is the recovery memo of salwar of Seema Devi, Ex.PD is the recovery memo of chunni, salwar, underwear and another towel, Ex.PH is the letter dated 25.9.1997. Ex.D1 is the letter bearing postal mark dated 21.7.1997.

7. The learned Sessions Judge acquitted all accused u/s 304-B, appellants were convicted u/s 498-A IPC, Madan Singh was acquitted u/s 498-A IPC also. The learned Sessions Judge has also recorded a finding that no case against any accused is made out within the meaning of explanation (b) of Section 498-A IPC, but held that a case u/s 498-A IPC within the meaning of explanation (a), has been made out against the appellants. In these circumstances, in the present

appeal the controversy narrows down to the point whether the prosecution has proved the case against the appellants within the meaning of explanation (a) of Section 498-A IPC.

8. PW-1 Roshan Lal in the context of all the three accused has stated that they used to beat his daughter. Urmila Devi used to taunt her by saying that Seema Devi walks like a mule. She had aborted before the marriage, the deceased was incapable of bearing children and, therefore, Madan Lal accused was to be re-married. On 6.2.1998 at 11.30 p.m. Nand Lal told him on telephone that Seema Devi had taken poison. Seema Devi and her husband had some discord in their room. He went to the village of accused at 1.00 a.m. accompanied by some persons. Seema Devi was lying dead on a cot. He left his son Romi Rajesh, Parkash Chand and Kuldip Singh there. He went to his house. In the morning at about 8.00 a.m., he telephoned at Police Station, Hamirpur. The police recorded his statement Ex.PA. In cross-examination, he has stated that Nand Lal had conveyed that Seema Devi had taken insecticide "baygon" on account of some quarrel which took place between the couple. When Madan Lal used to come on leave, then both of them used to come to his house. He admitted having written letter Ex.D1, Madan Lal had written letter Ex.P11 (on the letter Ex.PH has been marked). He did not complain about maltreatment and beatings of the accused to Gram Panchayat.

9. PW-2 Prem Lata has stated that Madan Lal had come on annual leave of two months in marriage. He availed the leave and thereafter left in the month of August. Seema Devi had come to her house, she used to remain sad. PW-2 asked Seema Devi about the reason of her sadness, Seema Devi told PW-2 that the accused were demanding Rs. 1,00,000/- for building another storey of their house. Seema Devi told PW-2 that accused alleged that Seema Devi had aborted before marriage. Seema Devi also told her that dowry given to her was less. Seema Devi died after nine months of the marriage. She committed suicide on account of maltreatment by the accused persons.

10. PW-3 Romi Rajesh is the younger brother of deceased Seema. He has stated that Urmila accused told him that she would send Seema Devi to their house in Lohri but Seema Devi did not come in Lohri. PW-10 Kalyan Chand has stated that on 6.2.1998 at about 11.30 p.m. he accompanied Roshan Lal to village Gehra. There were four or five other persons in the jeep. They reached village Gehra at 1.00 a.m. At the house of the accused, Nand Lal met him. PW-10 asked him what had happened, he replied what was to happen that had happened. He pleaded that he should be saved.

11. PW-11 Hari Chand, Retd. Sub Inspector investigated the case. He has stated that some of the inhabitants of the village were present at the house of the accused when he reached there. He interrogated those persons. They had told him that Seema Devi was not subjected to maltreatment of any kind. PW-13 Dr. N.S. Dogra, had conducted autopsy of Seema Devi and prepared report Ex.PW-13/A. According to him, she died because of poisoning as she had taken

"baygon" insecticide.

12. Section 498-A provides that who being husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished. The explanation (a) to Section 498-A is as follows:

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.

In order to bring the case within in the ambit of explanation (a) of Section 498-A, the prosecution is required to prove wilful conduct of the accused of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman, whether mental or physical. The learned Sessions Judge, as noticed above, has held that no case u/s 498-A explanation (b) has been established by the prosecution. In these circumstances, it is to be seen whether wilful conduct of the accused as contemplated in explanation (a) has been proved by the prosecution in the present case.

13. In statement Ex.PA before the police, PW-1 Roshan Lal has stated that Seema Devi used to say that her father-in-law, mother-in-law and husband alleged that she had aborted before marriage, she walks like a mule and she would not bear a child and they would marry their son second time. She had been given some eatable having adverse magical effects. PW-1 in his statement in the court has stated that Urmila Devi used to taunt Seema Devi by saying that she walks like a mule, she had abortion before marriage, she was incapable of bearing children and therefore, Madan Lal was to be re-married. The statement Ex.PA of PW-1 before the police on this point is contradictory to the statement of PW-1 in the Court. PW-1 in Ex.PA named father-in-law, mother-in-law and husband of Seema Devi for their alleged imputations of abortion of Seema Devi before the marriage, she walks like a mule and she would not bear children and their son was to be re-married. In the Court, PW-1 has named only Urmila Devi for such utterances. PW-2 Prem Lata has stated that accused taunted Seema Devi that she had aborted before marriage without naming all or any particular accused. She has not stated that accused taunted her that she walks like a mule and she would not bear children. Thus, PW-2 has contradicted PW-1 on this point. PW-2 has given another twist by stating that accused compared her dowry with the dowry of her Jethani (sister-in-law). This was not stated by PW-1.

14. PW-3 Romi Rajesh brother of deceased Seema Devi has not stated anything regarding taunts and ill-treatment of Seema by her mother-in-law and father-in-law. There is another important aspect that PW-1 and PW-2 have not stated that the alleged utterances of the appellants were having any adverse effect on the psyche of the deceased Seema Devi. PW-2 has stated that Seema Devi used to remain sad and when she asked about the reason of her sadness then she told that accused were demanding Rs. 1,00,000/- for building another storey of their

house. The reason of alleged sadness was not the alleged utterances attributed to appellants but was due to something else which was not accepted by the learned Sessions Judge. In other words, the alleged utterances of appellants had not affected deceased Seema Devi in any way therefore, it cannot be said that the appellants by way of wilful conduct committed cruelty which compelled Seema Devi to commit suicide.

15. It has come on record that Madan Singh husband of Seema Devi had come on leave and both the husband and wife were in the room on 6.2.1998 when Seema Devi committed suicide. The appellant No. 1 having come to know the incident informed PW-1 Roshan Lal father of the deceased immediately on telephone, who naturally asked the appellant No. 1 why Seema Devi deceased had committed suicide. PW-1 in Ex.PA has stated that appellant No. 1 told him that the husband and wife had some quarrel and for that reason Seema Devi had taken the extreme step. The conduct of appellant No. 1 in informing PW-1 father of Seema Devi immediately after the incident indicates the innocence of the appellants. There is nothing on record to show that appellants committed some act or omission of grave nature immediately before the incident which compelled Seema Devi to commit suicide. The allegations of alleged wilful conduct against the appellants are vague, general and without any specific instances.

16. The statement Ex.PA of PW-1 further indicates that Seema Devi had visited her parents before 6.2.1998 and at that time, she allegedly disclosed the taunts of the appellants and her husband to her mother and grand-mother. PW-3 has stated that on 11.1.1998 he had gone to the house of the accused to invite his sister on the occasion of Lohri but she did not come. There is nothing on record that in between 11.1.1998 and 6.2.1998 Seema Devi visited her parents. In these circumstances, it can be inferred that she disclosed the alleged taunts to her mother and grand-mother some times prior to 11.1.1998. The prosecution has not brought anything on record that after 11.1.1998 appellants mis-behaved or taunted Seema Devi to such extent which became the cause for Seema Devi to end her life on 6.2.1998. There is substance in the defence that husband and wife had tiff on some issue on 6.2.1998 at the relevant time, Seema Devi could not control herself and she consumed poison and ended her life. But for this sad and unfortunate event, the appellants cannot be blamed.

17. The learned Sessions Judge has not properly appreciated letter Ex.PH dated 25.9.1997 of Madan Singh addressed to PW-1. In Ex.PA, PW-1 has stated that right from the date of marriage of her daughter Seema Devi, her father-in-law, mother-in-law and husband used to beat her. Ex.D-1 is the letter bearing postal mark dated 21.7.1997 of PW-1 addressed to Madan Singh. In this letter, there is no indication that Seema Devi was being ill-treated by anyone. In Ex.PH, Madan Singh has written something about the admosphere in his house. But the said letter cannot be stretched to the extent that Seema Devi was being ill-treated. In any case, the incident took place on 6.2.1998 more than 4 months after letter Ex.PH. In letter Ex.PB dated 13.11.1997 of Madan Singh addressed to PW-1 he

has stated nothing about the atmosphere in his house.

18. It has been submitted on behalf of the respondent that appellant No. 1 had confessed before PW-10 when he said that what was to happen that had happened and appellant No. 1 pleaded that he should be saved. This part of the statement of PW-10 cannot be construed to be confession of guilt by appellant No. 1. It appears the appellant No. 1 on the death of his daughter-in-law Seema Devi was in grief and out of grief he has stated that what was to happen that had happened, his pleading to be saved, cannot be treated as confession. It appears that this expression was used by appellant No. 1 in the presence of untoward incident which took place in his family where daughter-in-law had committed suicide, therefore, appellant No. 1 probably wanted to convey that he should be saved from humiliation in the society. It does not mean that appellant No. 1 has stated that he or any other accused caused the death of Seema Devi.

19. Seema Devi was residing with her in-laws at the time of her death. In case she was ill-treated by her in-laws, then in normal course she would not have stayed with her in-laws inasmuch as it has come on record that she had been visiting her parents. The prosecution has not examined independent witnesses from the village or area where Seema Devi was residing at the time of her death in order to show how she was being treated by her in-laws including her husband. PW-11 Hari Chand, Investigating Officer has stated that he had interrogated some villagers who had come in the house of appellant No. 1 at the time of death of Seema Devi and such villagers had told him that Seema Devi was not subjected to maltreatment of any kind. This statement of Investigating Officer strikes at the root of the prosecution case that Seema Devi was maltreated by her in-laws and for that reason she committed suicide.

20. In State of Maharashtra Vs. Ashok Chotelal Shukla, , the Supreme Court has held as follows:

The fact that after the incident of 26.11.1983 the respondent had approached Vibha and her parents on the very next day and apologised and no other incident either of demand of money or ill treatment had taken place after that date makes it doubtful if harassment and cruel treatment given by the respondent was the immediate cause of committing suicide. Before a person can be convicted u/s 498A, I.P.C. the prosecution has to prove that he committed acts of harassment or cruelty as contemplated by that section and that harassment or cruelty was the reason for the suicide.

In the present case, the prosecution has miserably failed to prove that the alleged taunts, harassment and cruel treatment given by appellants were the immediate cause for committing suicide by Seema Devi. The prosecution has not proved the alleged acts of cruelty by leading specific evidence. The learned Sessions Judge has not properly appreciated the material on record in view of the requirement of Section 498A IPC. The conviction and sentence of the appellants recorded by the learned Sessions Judge is thus liable to be set-aside.

21. No other point was urged.

22. The result of the above discussion, the appeal is allowed, judgment of conviction and sentence dated 1.3.2002 passed by the learned Sessions Judge, Hamirpur in Sessions Trial No. 06 of 1999 is set-aside. The appellants are acquitted of the charge for offence punishable under Sections 498A IPC, fine amount, if any, deposited by them be refunded to them, their bail bonds are discharged.