
(2005) 01 MP CK 0049

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 618 of 2001

Nath Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 201, 304

Citation : (2005) 2 DMC 114

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : R.K. Sharma and M.M. Tripathi, for the Appellant; V.S. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Gohil, J.—Appellants have been convicted u/s 304B and sentenced to 10 years" R1 and fine of Rs. 1,000/- in default of payment of fine to further undergo R.I. for six months, u/s 498A but no sentence is awarded and they have also been convicted u/s 201, IPC and sentenced to 3 years R1 and fine of Rs. 500/- and in default to further undergo R.I. for three months wide judgment dated 27.11.2001 passed in S.T. No. 274/1999 by Additional Sessions Judge, Gohad against which they have filed this appeal u/s 374(2) of the Code of Criminal Procedure.

2. According to prosecution, on 21.3.1999, Rajbahadur Singh resident of village Ghamori, P.S. Mhou, District Bhind along with Ramratan and Jagannath lodged the report to Police Station Chhimka Gohad that his daughter Mahadevi (deceased) was married to Siyaram-appellant No. 2 on 13.5.1994. It was further stated that after marriage she was maltreated by the appellants and his mother Tussabai. On 30.10.1995, deceased Mahadevi wrote a letter to her father from her maternal uncle's house that her father-in-law and mother-in-law have turned her out from the house and whole day and night they are quarrelling and

they have also kept her belongings, clothes and ornaments and her brother-in-law (Devar) has left her at her maternal uncle's house and had requested her father to come and meet her as she was in a state of shock. She has further made a complaint in the letter that she used to be harassed and given beating by the appellants. Thereafter, Rajbahadur went to the house of Nathu at village Chhimka and asked as to why his daughter had been turned out. Appellant Nathu Singh told that he had not received Rs. 50,000/- and motorcycle in dowry. Rajbahadur told that he had given dowry according to his means and now he has no source-of income to give further more dowry. Thereafter, deceased Mahadevi lived with her parents for about two years. Thereafter there was Panchayat in the village and appellant Nathu assured him that now he will not harass or ill-treat his daughter and took her away but said that he should send motorcycle and Rs. 50,000/-. In the report, it was further stated that on 13.3.1999 he came to know through Vedram that his daughter Mahadevi has been killed by her in-laws. After hearing the news he rushed to village Chhimka along with villagers and relatives and enquired as to how her daughter had expired. The appellant told him that they have killed his daughter on account of not fulfilling the demand of dowry. They have also cremated her without giving intimation to the complainant or to his family members. On the basis of aforesaid report crime was registered under Sections 304B and 201, IPC. Matter was investigated. Site plan was prepared. Ashes and some bones along with a blouse and clothes were recovered from pyre. Appellants were arrested and charge-sheet was filed.

3. During trial appellants abjured their guilt. u/s 313 of the Code of Criminal Procedure, appellant Nathu took the defence that deceased Mahadevi was ill and she had died due to illness and younger daughter of Rajbahadur had remained in their house during the period of illness of Mahadevi and he has been implicated falsely. Appellant No. 2 Siyaram also took the same defence that Mahadevi was ill and she was treated at Gohad and by the doctor of Gohad, she was referred to Gwalior and when she was being taken to home in a bullock cart, she died at her house, and on earlier occasion her younger sister had also remained with her. This defect was also taken that intimation of her death was given to Jagannath, maternal grand father of deceased through messenger and they had told that they are coming. They waited but on the insistence of villagers her body was cremated and next day Rajbahadur, Jagannath and other 5-10 relatives had reached in the village and they demanded money for not lodging the report. Other accused persons have also taken the defence that they were not present at the spot and they were in their house and they have been implicated falsely.

4. Trial Court after considering the evidence on record acquitted two accused persons Kresa @ Srikrishna and Vasudev who are the sons-in-law of appellant Nathu but convicted the appellants against which appellants have filed this appeal. One co-accused Smt. Tussabai wife of Nathu Singh and mother of Siyaram, is still absconding.

5. Mr. R.K. Sharma, learned Counsel for the appellants submitted that the

learned trial Judge has adopted the policy of pick and choose while acquitting the co-accused against whom the same witnesses deposed in the trial and the FIR was lodged after due consultations without furnishing explanation for the delay. The allegations of demand of dowry and harassment by the appellant have been levelled after the death of deceased. Letter (Ex. P/2) which has been relied upon was written in the year 1995 much before the incident and there is nothing in the letter about any maltreatment or demand of motorcycle or amount of Rs. 50,000/- as dowry. There are material contradictions and omissions in the evidence of prosecution witnesses. The witnesses are close relatives and highly interested. The statement of witnesses was recorded after considerable delay. In the evidence of Dulari (P.W. 2), mother of the deceased, she has not stated anything about the demand of motorcycle or cash of Rs. 50,000/-. Trial Court has wrongly discredited the evidence of natural death due to illness of deceased. Trial Court has also not considered the defence evidence about the abortion of deceased and there is no evidence about the homicidal death of deceased. There is also no medical evidence on record and, therefore, Counsel for appellants prayed for acquittal of the appellants.

6. In reply learned Counsel for State supported the judgment and findings recorded by the Trial Court and also supported the conviction and sentence.

7. After hearing learned Counsel for parties, I have examined the prosecution evidence. P.W. 1 Rajbahadur has deposed that the marriage of her daughter (deceased Mahadevi) took place with Siyaram on 13.5.1994 and after marriage they were not treating her well. They were demanding motorcycle and Rs. 50,000/-. Her mother-in-law and father-in-law were maltreating her and practising cruelty upon her and she was also removed from the house and thereafter she had stayed at the house of her maternal uncle from where she has written letter (Ex. P/2) and thereafter for two years she lived with him at his home. In the meantime he had also referred the matter to Community Panchayat where the in-laws had accepted their fault and thereafter father-in-law and others gave assurance and took her at their house but after some time he was intimated by Vedram, one boy of the village, that his daughter has been killed and burnt. When he went to the home of accused persons, he was intimated that for not fulfilling the demand of dowry they have burnt his daughter. He is also the witness of FIR as well as seizure memo of marriage invitation card, mark-sheet (Ex. P/17), photograph, spot map (Ex. P/5), seizure memo of ashes, bones and one blouse and the petticoat of the deceased (Ex. P/6), letter of "Vidai" (Ex. P/9) and Lagan Patrika (Ex. P/8). In the cross-examination, he has admitted that at the time of marriage no dowry was settled. He has further stated that after marriage his daughter had told him that her in-laws are demanding dowry. Same facts were also told to her mother. He has got lodged any report about the demand of dowry. Though he was unable to give any explanation about this omission in his case-diary statement that when Nathu came to take his daughter at that time he had told him that he will not harass his daughter and asked him about the motorcycle and Rs. 50,000/-. He has also admitted that he had not

seen any injuries on any part of the body of his daughter when she had come to the house of her maternal uncle. Why the fact of inviting Panchayat has not been mentioned in his report (Ex. P/1) he could not give any reason, but he has admitted that letter (Ex. D/2) was written. He has denied about the abortion of his daughter. He has also denied that she was treated by doctor or she died because of some illness and he has also denied other suggestive defence questions.

8. Dularibai (P.W. 2) is the mother of the deceased. She has also supported the prosecution case. She has stated that in-laws of her daughter were harassing her daughter and demanding dowry of Rs. 50,000/- and because of dowry they have killed her. Whenever her daughter used to come to her house, she used to say that they are demanding Rs. 50,000/-, she would be killed by her in-laws. After marriage she had kept her daughter for two years in her house and there was a Panchayat and after Panchayat her daughter had gone to her in-laws house and thereafter Vedram of her village had informed that in-laws have killed her daughter. In the cross-examination, she has stated that when deceased had come to her maternal uncle's house she was having injuries. In the cross-examination, she has maintained the statement about the demand of dowry and also about harassment by her in-laws and also denied all the suggestive questions of defence. P.W. 3 Ramratan is the uncle of the deceased. He has supported the prosecution about the harassment of deceased by her in-laws and also about the information by Vedram about her killing. In the examination-in-chief he has not stated anything about demand of dowry but in the cross-examination he has stated that 15-20 days before the death deceased had told him that in-laws are harassing her for demand of dowry. He is also the witness of seizure of letter and spot map (Ex. P/4) and seizure of clothes (Ex. P/6).

9. Munnalal (P.W. 4), neighbour, is an independent witness. He has stated that deceased was married to Siyaram 6-7 years before and her in-laws were harassing her. After marriage she had stayed at her father's house for about 2 years and Rajbahadur had told him that her in-laws are harassing her. He had also gone in Panchayat and it was decided in Panchayat that deceased should be sent to her in-laws house and it was also decided in the Panchayat that now her in-laws will not harass her and thereafter she was sent to her in-laws house and they have killed her. He had also accompanied to village Chhimka at the house of accused persons and at that time her mother-in-law had told him that she has died because of illness. In the cross-examination, he has stated that when they had gone to village Chhimka, accused persons Nathu and Siyaram both were busy in harvesting their mustard crop. He had gone to that village just after a day of the death of deceased. In the cross-examination, he has stated that he has not gone to village Chhimka before the death of deceased but later on he has stated that he had gone to village Chhimka before her death for Panchayat. Intimation about her death was given by Rajbahadur to him. Ramkishan had also gone to Chhimka with them.

10. Totaram (P.W. 5) is the cousin brother of Rajbahadur. He has supported the prosecution case and deposed about demand of dowry as well as about the harassment given by the in-laws of the deceased. He has also stated that for two years her in-laws had left her and she was residing with her parents and thereafter matter was settled in Panchayat and she had gone to her in-laws house on the promise that they will not harass her and thereafter he had received information through Rajesh that in-laws have killed her and thereafter he had gone to village Chhimka. He had also gone to cremation ground. In the cross-examination, he has denied the fact that before her death the deceased was pregnant and more or less he has maintained his statement of examination-in-chief.

11. Vasudev (P.W. 6) is the maternal uncle of the deceased. He has also deposed about the maltreatment given to the deceased by her-in-laws on account of demand of dowry. He has also deposed that deceased had also told him that her-in-laws used to harass and beat her. He has also deposed about the settlement in Panchayat and promise made by the in-laws that they will not harass her in future and subsequently he had come to know that she has been killed. While returning from village Chhimka, Rajbahadur had come to his house at Gohad. In the cross-examination, he has stated that Rajbahadur, father of deceased had told him about the demand of dowry by her in-laws. He has also stated that how much amount was spent in the marriage of Mahadevi and has also admitted that at the time of marriage there was no dispute about dowry and no dowry was demanded but he has clarified that after the marriage they started demanding dowry and harassing her. Though, he had not gone to her house, but he had participated in Panchayat.

12. Brijkishore (P.W. 8) had forwarded the counter copy of the FIR to Judicial Magistrate, First Class and SDM and has also proved the document Annexure P/11. Pradeep Rajouria (P.W. 11), is the S.I. He has recorded FIR (Ex. P/1). He has also prepared spot map (Ex. P/4) at the instructions of Rajbahadur. He had also inspected the cremation site. Ex. P/5 is the spot map of cremation ground. Thereafter he had seized the document and investigated the matter. Hukum Singh Yadav (P.W. 12), S.D.O. (P) had recorded the statement of witnesses and had prepared arrest memos Exs. P/13 and P/14. He had also arrested Vasudev by arrest memo Ex. P/10 and Kresa @ Shrikrishna vide Ex. P/12.

13. Bhikam Singh (P.W. 13) was also examined by prosecution. He is the witness of Panchayat in whose presence matter was discussed in Panchayat. He has stated that in the Panchayat Siyaram was saying that he will perform second marriage as he does not like the deceased but he was persuaded and after persuasion he had agreed for the "Vidai" and took the deceased with him. After one year Rajbahadur came to his house and told him that they have killed his daughter and they have also burnt her dead body. On receiving this information, he along with Munna Katore, Totaram and father of deceased had gone to village Chhimka where he had seen that mother-in-law of the deceased was sitting

leisurely on a cot. Thereafter they called the accused persons from their field. When they came and on inquiry about the death of deceased, Siyaram brought one piece of plastic rope which was around one hand in length and said that from this piece they have killed the deceased. He is the witness of extra-judicial confession of accused Siyaram, but from his evidence this is clear that there is no strong and reliable evidence on record to prove extra-judicial confession. He was pointedly cross-examined on his case-diary statement. In the cross-examination he could not furnish any explanation why this fact about the extra-judicial confession of Siyaram has not been mentioned in his case diary statement (Ex. D/7). He was also unable to give any explanation that why in his case-diary statement (Ex. D/7) it was written that when they reached at their house at Chhimka, the house was found locked. In the cross-examination, he has denied this fact that deceased was pregnant and she died because she was ill. He has maintained his statement that intimation of her death was not given.

14. From the perusal of the aforesaid prosecution evidence, it is clear that all the witnesses have categorically deposed that initially there was no demand of dowry and there was no dispute in the marriage about the demand of dowry but after some time accused persons started harassing and maltreating the deceased and started demanding dowry. It is not expected from other relatives to tell what dowry they were demanding, but clear-cut evidence has come on record that the accused persons were demanding Rs. 50,000/- and a motorcycle. Thereafter brother-in-law (Devar) of the deceased has left her at her maternal uncle's house from where she had written letter to her father and thereafter she stayed at her parents' house for about two years. Thereafter Panchayat was called and in the Panchayat matter was settled and in Panchayat appellant No. 1 Nathu had assured that in future they will not harass and they took away deceased Mahadevi to their house and after one year Vedram informed that Mahadevi has been killed and her dead body has been burnt. It has also come in the evidence that intimation of her death or intimation about her pregnancy was also not given to her parents. The distance between two villages is 40 kilometres. Clear-cut evidence on record is also available about practising cruelty by the accused persons with the deceased. The cremation of the dead body was also performed without giving any information to the parents of the deceased. Accused Siyaram in his statement recorded u/s 313 of the Code of Criminal Procedure has stated that the intimation about the death was given to maternal grandfather Jagannath at village Gohad and they waited for him for some time but when nobody came, on the insistence of villagers, they cremated the dead body. Next day Rajbahadur, Jagannath and around 5-10 relatives came to their house. Therefore, there is no dispute about this prosecution story and the version of prosecution witnesses that intimation about the death was not directly given to the parents of the deceased or to village Ghamori where they are residing. It has been found proved that on next day all the persons visited village Chhimka where accused persons are residing and deceased was burnt. Therefore, from the prosecution evidence, it is clear that the prosecution has proved the demand of

dowry, cruelty as well as killing of the deceased. It is also clear that no intimation about her death was given and the cremation took place in absence of parents of deceased. There was no post-mortem of the dead body. The aforesaid version has not only been explained but has also been proved by the prosecution.

15. During trial accused persons took defence that deceased died because of some illness. Prosecution also examined D.W. 1 Dr. B.M. Dinkar who has deposed that on 18.3.1999 lady Mahadevi was brought to her Royal Clinic at Gohad which he is running for last five years. He has treated her upto 3 p.m. and thereafter had referred to J.A. Hospital, Gwalior. She was bleeding and her blood pressure was 80/40 and it was a case of abortion 2-3 days back. In the cross-examination he has admitted that fact of treatment was mentioned in the register of hospital but he has not produced that register because the same is not available and he has destroyed it. He has admitted that in his clinic he is not having the facility of admitting the patients and before coming to his clinic she had been treated for 5-6 days at Kamla Raja Hospital at Gwalior which is a Government Hospital which is having all the facilities such as Gynaecologist, operation ward, etc. and is a big hospital of Gwalior. He is not aware that when she remained hospitalised at Kamla Raja Hospital. He has stated that before that day she had not come for any treatment at his clinic and though he has issued certificate but no number has been mentioned over the same. He has further admitted that he is treating the patients as outdoor patients. He further stated that when she was brought her condition was not good. She was analmic and her condition was out of control. From this evidence, it is clear that deceased was already treated in the Kamla Raja Hospital before coming to his clinic and issuing certificate of illness, but the defence has suppressed these facts and has not produced any evidence of that hospital, therefore, the defence of illness taken has not been found proved.

16. Urmila (P.W. 2) is the neighbour. She has stated that Mahadevi was having three months pregnancy and abortion took place and she was having severe bleeding. She was taken to the hospital. She died and thereafter she was brought to the village. She does not know that after abortion where she was taken for treatment. Her dead body had come to the village in the evening.

17. The Trial Court has also examined the defence evidence of aforesaid witnesses and found that the evidence of D.W. 1 Dr. B.M. Dinkar is not natural because without having the facility of admitting the patients in his clinic, he treated Mahadevi from 8.30 a.m. to 3.30 p.m. for about 7 hours and he referred her to J.A. Hospital, Gwalior. He has admitted in para 6 of his cross-examination that he had enquired from deceased about her earlier treatment and he had received this information that 5-6 days before she was treated at Kamla Raja Hospital at Gwalior which is a Government Hospital and having all facilities of treatment. The statement of D.W. 2 Urmila also appears to be false. When she remained hospitalised for 5-6 days at Kamla Raja Hospital, there is no case that there was abortion 2-3 days before. It is also unnatural that the mother of the

deceased was not informed about the pregnancy of her daughter. Dulari (P.W. 2), mother of the deceased, was examined and also cross-examined but in cross-examination, no question was put to her about her pregnancy and abortion. Rajbahadur (RW. 1) has also stated that before the death of his daughter, his son had gone to see his sister Mahadevi 4-6 days before but she had not informed him about the pregnancy or about the abortion. It is very unnatural that if Mahadevi died because of some illness or she remained admitted in the hospital for 5-6 days then why the information of her illness and admitting her in the hospital was not given to her parents. It also appears to be quite unnatural that after her death, the intimation of her death was not given to her parents and the in-laws had not waited for cremation until their arrival. Why they have cremated the dead body so quickly also raises a reasonable suspicion and certainly that goes against the accused persons. Admittedly, the post-mortem of the dead body could not be performed. It has been found proved that deceased died under suspicious circumstances. If her death was natural then, apparently, the conduct of the accused persons is abnormal and their contention cannot be believed that she died because of some illness or natural death. Therefore, from the evidence, it is clear and has been found proved that her death is unnatural and under suspicious circumstances. As per the language of Section 304B, IPC ---where the death of a woman is caused by any burn or bodily injury or occurs otherwise under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband, or any relative of her husband for or in connection for any demand of dowry, such death shall be called dowry death. Sufficient evidence is available on record and the prosecution witnesses have clearly deposed that the deceased was subjected to cruelty and ill-treatment for or in connection with demand of dowry. The cremation performed hurriedly also raises a serious doubt about the conduct of the appellants. All the witnesses have deposed that the appellants were practising cruelty and giving ill-treatment to the deceased. There was mediation by the Panchayat and there was compromise and thereafter she was taken to her in-laws house and this shows that her death took place under suspicious circumstances within seven years of her marriage at her in-laws house. Thus, it is clear that immediate cause of her death was harassment and cruelty and this being an unnatural death shall have to be called dowry death. This circumstance is also very relevant that after the marriage she was left at her maternal uncle's house from where she had written letter to her father and thereafter continuously she lived at her parents house at village Ghamori. Thereafter, there was Panchayat and mediation by the relatives of both the sides and thereafter she died under suspicious circumstances in the house of accused persons who are in-laws. This fact also cannot be overlooked that the mother-in-law of the deceased is still absconding. At the time of final arguments in this appeal, learned Counsel for appellants have not satisfactorily replied that whether she has surrendered or not. Ultimately parents of deceased have right to know how she died. Whether she committed suicide or whether she has been murdered. Appellants themselves destroyed the evidence and burnt the dead

body of the deceased with a view to cause disappearance of the evidence.

18. Therefore, from the aforesaid discussion, it is clear that the prosecution has successfully proved the allegations against the accused-appellants and the Trial Court has found that the defence has failed to prove that she died in normal conditions due to some illness. After appreciating the evidence on record, I find that the Trial Court has not committed any illegality in appreciating the prosecution as well as defence evidence. Prosecution has successfully proved the allegations of demand of dowry, practising cruelty and giving ill-treatment to the deceased and about unnatural death of the deceased under suspicious circumstances in the house of appellants.

19. After appreciating the evidence, Trial Court acquitted two accused persons Kresa @ Shrikrishna and Vasudev against which State has not preferred any appeal. The allegation against them was of causing disappearance of the evidence. Another co-accused Tussabai, mother-in-law of the deceased is still absconding. Thus, considering the totality of the evidence on record, I do not find any ground for interference in the findings of guilt recorded by the Trial Court or any case for interference by this Court in this appeal. Trial Court has rightly convicted the appellants under the aforesaid sections.

20. Mr. R.K. Sharma, in the last submitted that looking to the age of appellant No. 1 Nathu Singh, his sentence be reduced to already undergone. He has suffered more than three years of jail sentence. It is not in dispute that Nathu Singh now must be aged about 68 years. Therefore, looking to his age, his sentence is reduced from 10 years R.I. to minimum sentence of 7 years R.I., but looking to the gravity of the crime he cannot be released on undergone jail sentence. As directed by the Trial Court all the sentences shall run concurrently.

21. Consequently, there is no merit in this appeal. This appeal fails and is hereby dismissed. The conviction and sentence of appellant No. 2 Siyaram is maintained and confirmed. The conviction of appellant No. 1 Nathu Singh u/s 304B, IPC is also affirmed but his sentence is reduced from 10 years" R.I. to 7 years" R.I. and his conviction and sentence under other sections is confirmed. All the sentences shall run concurrently. Appellant No. 1 Nathu Singh is on bail. His bail bonds stand cancelled. He shall surrender before CJM, Bhind within one month from the date of this judgment otherwise C.J.M. shall have liberty to take him in custody and commit him to jail for undergoing remaining part of his jail sentence.