
(2014) 12 SC CK 0100
In the Supreme Court Of India
Case No : Criminal Appeal No. 791 of 2012

Prahallad Biswas and Others

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313 — Evidence Act, 1872 - Section 113A — Penal Code, 1860 (IPC) - Section 304B, 306, 34, Section 498A

Citation : (2015) 2 RCR(Criminal) 56

Hon'ble Judges : S.J. Mukhopadhyaya, J;N.V. Ramana, J.

Bench : Division Bench

Advocate : Bijan Kumar Ghosh, Advocate, for the Appellant; Gopal Singh and Rituraj Biswas, for the Respondent

Judgement

1. This appeal has been preferred by Appellants against judgment and order dated 24th February, 2012 passed by the Gauhati High Court, Agartala Bench in Criminal Appeal No. 49 of 2010. By the impugned judgment and order, the High Court dismissed the appeal and upheld the judgment and order dated 19th April, 2010 passed by Additional Sessions Judge, Court No. 3, West Tripura, Agartala in Sessions Trial No. 05 (WT/A) of 2006 convicting the Appellants Under Sections 498A and 306 read with Section 34 of the Indian Penal Code (hereinafter referred to as "Indian Penal Code" for short). The case of the prosecution is that on 19th August, 2004 at 1215 hours, a written complaint of Smt. Mira Karmakar(PW-1) was received at the Women Police Station, Agartala. Therein it was alleged that Swapna Karmakar (hereinafter referred to as "deceased"), sister-in-law of the informant was married to Prahallad Biswas of South Chandrapur during the end of the month of Shraban, 1410 B.S. according to Hindu Rites and Customs. During the marriage, as per the demand of the bridegroom party, cash gold ornaments and other articles were given. Due to financial constraints, T.V. and gold chain for the bridegroom could not be given. For this, few days after the marriage Prahallad Biswas (accused No. 1) alongwith his two sisters Manasi Biswas and Saraswati Biswas (Sarkar)(accused Nos. 2 and

3) started torturing her physically and mentally. This compelled Swapna (deceased) to come her paternal house. Following conciliation involving the village elders, Swapna went back to her husband's house. On 19th August, 2004, in the early morning, they got information that Swapana (deceased) was hospitalized at the G.B.P. Hospital, Agartala being fallen ill. Reaching the hospital, they learnt that Swapna had died.

2. Pursuant to the complaint P.S. Case No. 45 of 2004 was registered and after investigation a prima facie case Under Section 498A Indian Penal Code, 304B Indian Penal Code read with Section 34 Indian Penal Code being made out against the accused persons, they were prosecuted. However, at the stage of framing of charges they were charged Under Sections 498A and 306 Indian Penal Code read with Section 34 Indian Penal Code.

3. During the trial on behalf of prosecution altogether 17 witnesses were examined apart from 8 exhibits and two M. Os. Series.

4. On behalf of the defence two witnesses, namely, Raju Miah and Dilip Paul were examined as D.W. 1 and D.W. 2.

5. Originally the stand taken by the defence was denial of allegation. However, Under Section 313 Code of Criminal Procedure and the defence evidence adduced, apart from the denial of allegation defence case is that of false prosecution and that the deceased died of food poisoning following consumption of Mansa Puja Prasad in the house of Sikha Chakraborty and Kalachand Paul.

6. Sessions Court on appreciation of evidence held all the three accused - Appellants herein guilty for the offence Under Section 498A Indian Penal Code to suffer RI for 3 years and to pay a fine of Rs. 1000/- each in default to suffer RI for one month each for commission of offence and Under Section 306 read with 34 Indian Penal Code, the accused were sentenced to suffer RI for 7 years and to pay a fine of Rs. 2,000/- each in default thereof to suffer RI for two months each. On challenge, the aforesaid judgment and order dated 19th April, 2010 passed by the Additional Sessions Judge, West Tripura Agartala was upheld by the High Court.

7. Learned Counsel appearing for the Appellants submitted that the accused has been convicted on the basis of the evidence of PW-1 (Smt. Mira Karmakar - complainant) and PW-6 (Smt. Sailabala Karmakar) sister-in-law and mother of the deceased. Both the witnesses being interested witnesses and in absence of any independent witnesses corroborating their statements, the Appellants cannot be held guilty.

8. Learned Counsel appearing for the Respondent - prosecution supported the judgment referring to the evidence of PW-2 (Shri Kalachand Paul), PW-5 (Shri Sushil Sarkar) and PW-9 (Smt. Sikha Chakraborty) who were independent witnesses.

9. We have heard Learned Counsel for the parties and perused the record.

10. PW-1 (Smt. Mira Karmakar) has deposed that during the marriage, the accused persons demanded T.V. and golden chain but due to financial inability they could not give the same. Same stand was taken by PW-1 in her complaint filed before the police. It was further deposed that after marriage Swapna started living with Prahallad at Chandrapur alongwith her two sisters, i.e. Manashi and Saraswati. They started torturing Swapna for not fulfilling the demand of T.V. and golden chain. This finds corroboration from the deposition of PW-2 (Shri Kalachand Paul) and PW-6 (Smt. Sailabala Karmakar).

11. During the cross-examination, some part of the statement of PW-1 and PW-2 were found to be beyond the previous statement but such minor discrepancies cannot be a ground to discard the statement made by PW-1 or the PW-2 nor it can be said that PW-1 or the independent witnesses PW-2 has improved their case.

12. PW-2 an independent witness, on the point of torture stated that the accused persons started torturing Swapna after two months of their marriage. He further deposed that his house is about 15/16 cubits away from the house of the Prahallad. The statement of PW-1 and PW-2 found corroborated from the deposition of PW-6.

13. PW-2 (Shri Kalachand Paul), PW-5 (Shri Sushil Sarkar), PW-6 (Smt. Sailabala Karmakar), PW-7 (Shri Sudip Karmakar) and PW-9 (Smt. Sikha Chakraborty) has deposed that after torture of Swapna, a meeting was held in the village which they attended. It was also attended by Arun Singh and Pijush Roy. They further deposed that in the meeting, Prahallad assured that he will not torture Swapna further.

14. Learned Counsel appearing for the Appellants with regard to the meeting submitted that the prosecution has failed to examine either Arun Singh or Pijush Roy and even Manindra Debnath in whose house the meeting took place who were not examined. Considering the deposition of PW-2, PW-5 and PW-9 who are neighbors of Prahallad, we do not find any reason to dis-believe them and non-examination of Arun Singh or Pijush Roy and even Manindra Debnath does not make the prosecution case shaky in any way.

15. PW-5(Shri Sushil Sarkar) another independent witness has deposed that during the marriage, brother of Swapna could not give T.V. and gold chain as per the demand of Prahallad. After the marriage, Swapna started residing at her husband's house with her two sister-in-laws. This witness has further deposed that after one and a half months of the marriage, Prahallad and his sisters started torturing Swapna on the demand of T.V. and gold chain. The statement of PW-5 finds corroborated from the deposition of PW-7(Shri Sudip Karmakar), another independent witness. PW-5 has also deposed that in the meeting that took place, Prahallad assured that he would not torture Swapna further and thereafter he took her to his house but after some time, the accused persons started torturing Swapna again.

16. PW-9 (Smt. Sikha Chakraborty) has deposed that at the time of marriage, Swapna's brother informed the bridegroom that he would give the golden chain and the T.V. later on as per their demand. Later such statement was found to be beyond the recorded statement during the cross-examination. However, the specific statement of PW-9 shows that after about 5 months of the marriage of Swapna, her brother died for which other family members could not give the golden chain and T.V. to the accused persons. Swapna's husband and her two sister-in-laws started torturing Swapna. This witness has further deposed that whenever Swapna came to her house she informed about the torture to her. PW-9 has also deposed that unable to bear with the torture, Swapna took shelter in the house of her parents. No contradiction could be detected in her cross-examination.

17. We find that the deposition of PW-1 (Smt. Mira Karmakar), PW-6 (Smt. Sailabala Karmakar) and PW-7 (Shri Sudip Karmakar) relatives of Swapna are well corroborated by P.Ws.-2 (Shri Kalachand Paul), PW-5 (Shri Sushil Sarkar) and PW-7 (Shri Sudip Karmakar) who are not related to the victim but are close neighbor.

18. Out of two defence witnesses D.W.-1 has deposed that he knows the accused persons as the co-villagers and that he attended the marriage of Prahallad. He has deposed that during the marriage, there was no demand from the side of Prahallad and that during his visit to the house of Prahallad, Swapna never complained to him of any torture or harassment on her and that he noticed their relationship to be normal. D.W.-2 has not deposed anything regarding demand of dowry or otherwise. However, deposition of D.W.-1 cannot outweigh the evidence of the prosecution witnesses as discussed above on the point of torture and is not enough to conclude that there was no torture upon her considering the depositions of prosecution witnesses as discussed above.

19. PW-11 (Dr. Shyamal Chandra Sarkar) who conducted the postmortem has deposed that on examination of the dead body he found multiple bruises in the front side of the both lower limbs from knee to the ankle joint and multiple bruises on the middle and lower part of the back. The injuries were healed and were caused at different times. The doctor has clearly opined that case of death was insecticide poisoning. Absence of Prahallad from his house when the victim consumed poison and her hospitalization by the other two accused persons do not in any way suggest that their relation with Swapna was normal and that they did not torture. On the other hand evidence from the side of the prosecution suggests the torture by accused on the Swapna (deceased), which is also corroborated by postmortem report where multiple bruises in the front side of the both lower limbs from knee to the ankle joint and multiple bruises on the middle and lower part of the back were found on the deceased. The defence failed to explain as to how the multiple bruises took place which was a few days back prior to the death.

Section 306 Indian Penal Code deals with abetment of suicide which reads as

follows:

"306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

20. Apart from direct evidence to show that a person has abetted commission of such suicide, when the question comes whether the commission of suicide by a woman had been abetted by husband or any relative of her husband, presumption to abetment to commit suicide by married women is to be dealt with the manner stipulated Under Section 113A of the Indian Evidence Act, 1872 which reads as follows:

"113A. Presumption as to abetment of suicide by a married woman.--When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

" [113A. Presumption as to abetment of suicide by a married woman.--When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

Explanation.--For the purposes of this section, "cruelty" shall have the same meaning as in Section 498A of the Indian Penal Code (45 of 1860).]

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21. For the purpose of this section, as per explanation, "cruelty" shall have the same meaning as in Section 498A of the Indian Penal Code which reads 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."

22. In the present case, we find that the accused Prahallad Biswas was married with deceased Swapna on 2nd August, 2003 and she committed suicide on 19th August, 2004 i.e. within one year 17 days. The prosecution has established that the deceased, a married woman committed suicide within a period of 7 years from the date of her marriage. The prosecution also successfully establish husband of the deceased and two relatives i.e. sister-in-laws subjected her to cruelty, as defined in Section 498A of the Indian Penal Code. Thus, we find that the prosecution has successfully proved that the accused abetted the deceased to commit suicide. In view of the discussions as made above and the evidence brought on record, we have no other option but to uphold the conviction and sentence passed by the Sessions judge as uphold by the High Court. In absence of any merit, the appeal is dismissed.

Appellants Bail bonds stand cancelled. Appellants be taken in custody to undergo remaining period of sentence.