
(2009) 06 MP CK 0018
In the Madhya Pradesh High Court

Pratap Singh and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 107, 306, 34, 498A

Citation : (2009) 06 MP CK 0018

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Advocate : L.N. Sankle, for the Appellant; Pankaj Dixit, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—This appeal is directed by the appellants u/s 374 of the Cr.P.C. being aggrieved by the judgment dated 26.2.99 passed by the IInd Addl. Sessions Judge, Sagar in S.T. No. 283/98 convicting all the appellants u/s 498-A of the IPC and sentencing each of them for RI 3 years with fine of Rs. 500/-in default of depositing fine further six month imprisonment, while appellant No. 1 Pratap Singh was also convicted u/s 306 of the IPC with sentence of RI 7 years with fine of Rs. 1000/-, in default of depositing fine further imprisonment for one year.

2. The facts of the prosecution case in short are that before three years from the date of the alleged incident i.e. 16.7.98, appellant No. 1 got married with deceased Shakun Bai. At the time of the marriage, no contact or conversation with respect of dowry took place between the parties or their families. As per further case, subsequent to marriage, for two years, no complaint regarding any act of cruelty was made by the deceased against the appellants. It is also said that before 10-11 months from the date of the incident, the deceased and her husband appellant No. 1 started residing separately from the parents of appellant

No. 1. Before two months from the incident the deceased was taken to the parental home by the father where she made some complaint against the appellants about taking more work from her and also regarding some beating. Subsequent to it, the matter was subsided between them and the deceased was sent with appellant No. 1 to her matrimonial home. Thereafter on the aforesaid date i.e 16.7.98, said Shakun Bai set herself on fire and committed suicide in her matrimonial home. After such incident, appellant No. 1 Pratap Singh went to the Police Station Rahatgarh and lodged the marg intimation of the aforesaid unnatural death, in which it is also stated that the deceased was suffering from stomach ache since morning. In the inquest inquiry, the inquest panchnama, spot-map and seizure memo were prepared. The dead body was sent to the hospital where its postmortem was carried-out, according to which deceased died because of burn injuries. In the course of marg inquiry, the statements of her parents Kishori Yadav and Smt Shyamrani Yadav, Meharban Singh (brother of said Kishori) and one villager Ramswaroop Yadav were recorded. In the course of such inquiry the first information report Ex.P/13 for the offence u/s 306/34 of the IPC was registered against the appellants. Thereafter, the appellants were arrested, interrogatory statements of the witnesses were recorded and after completion of the investigation, the appellants were charge-sheeted for the offence u/s 306 read with 34 of the IPC. On consideration of the charge-sheet, initially the charge of Section 306, in alternate 306/34 of IPC was framed against them. Subsequently the additional charge u/s 498-A was also framed but the appellants abjured the guilt from such charges, on which, the trial was held. After recording the evidence, on appreciation of the same, all the appellants have been convicted u/s 498-A of the IPC with the above mentioned punishment while, appellant No. 1 is additionally convicted u/s 306 of the IPC with the above mentioned punishment. The same is under challenged in this appeal. It is noted that appellant No. 2 and 3 have been acquitted from the charge of Section 306 of IPC.

3. Shri L.N. Sankle, learned appearing counsel of the appellants taking me through the evidence led by the prosecution, assailed the impugned judgment saying that the ingredients of the alleged offence of Section 306 of the IPC or/ and Section 498-A of the IPC is not made out against any of the appellants. He further said that on proper appreciation of the evidence, the trial court ought to have acquitted them from all charges. According to his submission in the lack of any admissible evidence showing that the deceased was abetted by the appellant No. 1 to commit the suicide, such appellant could not be convicted u/s 306 of the IPC. It was also argued that instructing the daughter-in-law or the wife to do the domestic work or the field work of the family field, could not be treated to be the act of cruelty and, in such premises, the approach of the trial court holding all the appellants guilty for the alleged offence u/s 498-A of IPC is not sustainable and prayed for setting aside the conviction of the appellants by allowing this appeal.

4. The aforesaid argument is responded by Shri Pankaj Dixit, learned Panel

Lawyer appearing on behalf of the State saying that parents of the deceased, namely, Kishori Yadav(P.W.4) and Shyamrani Yadav (P.W.5) have categorically stated about act of cruelty committed by the appellants with the deceased and the act of appellant No. 1 abetting to deceased for committing suicide. In such premises, the findings and the approach of the trial court holding conviction against the appellants do not require any interference at this stage. He further said that the ingredients required for the alleged offences are successfully proved by the prosecution, and prayed for dismissal of this appeal.

5. After hearing the arguments of the parties at length, I have carefully examined the record along with the depositions of the prosecution witnesses and also perused the impugned judgment. It is undisputed fact on record that on the alleged fateful day, Shakun Bai wife of appellant No. 1 while the daughter-in-law of appellant No. 2 and 3, committed suicide in her matrimonial home by setting herself on fire. Such fact is stated by appellant No. 1 in his marg intimation recorded by the police. Even on carrying-out the autopsy of the deceased, her death is found to be caused because of the burn injuries. So, such fact does not require any further consideration. Accordingly, it is held that the trial court has not committed any error in holding that the deceased Shakun Bai died unnatural death and as per available evidence she died within the period of seven years from the date of her marriage, therefore, such finding do not require any interference at this stage.

6. In the case at hand, the court has to examine whether any act of cruelty defined u/s 498-A of the IPC was committed by the appellants or any of them with the deceased while residing in their family. The court has also to examine whether the deceased was abetted by the appellant No. 1 by any means to commit suicide as defined u/s 306 read with Section 107 of the IPC, in which abetment is defined.

7. As per requirement of Section 306 of the IPC, the act of accused regarding abetment to the deceased for committing suicide must be proved as per requirement of Section 107 of the IPC according to which the prosecution is bound to prove that; the deceased was instigated by the accused to commit suicide or the accused involved themselves in such conspiracy with some other person by which the deceased was abetted and proceeded to commit the suicide. The third ingredient is to extend intentionally aids by any act or illegal omission to the deceased by the accused for doing such thing. Out of such ingredients if any of them is proved against the accused with the cogent and reliable evidence then only the accused can be convicted u/s 306 of the IPC otherwise not.

8. So far Section 498-A of the IPC is concerned, the prosecution has to prove the cruelty as per requirement of such section. According to such section prosecution is bound to prove that the willful conduct of the accused was of such nature which drove the woman to commit suicide or caused grave injury or danger to life, limb or health (whether mental or physical) or any act of harassment of the accused which coerced her or any person related to her, to meet any unlawful

demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand. In view of aforesaid, on examining the present case, undisputedly according to the prosecution itself it was not the case of any cruelty committed by the appellants on account of the demand of dowry. So, it can be held that such type of cruelty was not committed by the appellants with the deceased. Now, I proceed to examine the conduct of the appellants whether they or any of them, committed any act or other type of cruelty defined in the later part of Section 498-A of the IPC or the appellant No. abetted to the deceased for committing the suicide.

9. The prosecution has examined as many as 13 witnesses, out of them Haridas (P.W.1) did not state any thing regarding the act of cruelty or abetment against any of the appellants. Jagat Singh (P.W.2) is the witness of inquest report, spot-map and seizure memo. He has not stated any incriminating thing against any of the appellants. Dr. N.K. Saini (P.W.3) was examined with respect of the postmortem report (Ex.P/4). The facts stated in such reports and the opinion of the doctor that Shakun Bai died due to burn injuries are not in dispute in the matter. Kishori Yadav (P.W.4) the father of the deceased deposed in para-2 of his deposition that subsequent to marriage, for two years, deceased did not tell anything regarding any harassment or the cruelty with her in the matrimonial home but thereafter she told him that her husband and said in-laws were used to insist her to do more work, on which, he brought her to the parental home. Subsequently, on subsiding the dispute, he again sent the deceased to her matrimonial home. In para-3 of deposition, he further said that more work was taken from his daughter by the appellants. In para-4 he stated that deceased was also insisted by the appellants to work in the family field. Due to such reason, on asking to send her with him, appellant No. 1 did not send her to the parental home saying that he may take her after 5-6 days. Meanwhile, his daughter expired. It appears from the aforesaid evidence that he stated only one thing that her daughter was insisted to do more work by the appellants in their family. Shyamrani (P.W.5) mother of the deceased also deposed on the same tune and stated that her daughter was insisted by the appellants in their family to do more domestic work. Except this, no other allegations are stated by such witnesses in their depositions.

10. Taking into consideration the face value of such statements, mere on the ground that appellants instructed or told the deceased to do more domestic work or work over family field, it cannot be said that such act of the appellants comes within the meaning of cruelty as defined u/s 498-A of the IPC. Simultaneously, asking to do more work could not be treated to be an act to instigate a person to commit suicide or involvement of the accused in any conspiracy by which the deceased proceeded to commit suicide and such act also could not be treated to be intentionally giving criminal aid to commit such an act as committed by the deceased. In such premises, such act of asking to do more domestic work or to work in the family field, from the daughter-in law or the wife, could not be said to be an act of abetment to commit suicide.. So, in view of the aforesaid

depositions of the parents, the alleged offences are not made out.

11. Eventually, at this stage, I would like to mention here that if asking the daughter in law or wife to do more domestic work or work over the field is held to be the act of cruelty or abetment to commit suicide then the very purpose of the law, the concept of the family and the relationship of its members may be jeopardized.

12. Besides the aforesaid , the other witness Ramswaroop (P.W.7) turned hostile on recording his deposition and did not state any incriminating thing against the appellants, although, in-chief he stated that he was told by Kishori, the father of the deceased, that his son-in-law appellant No. 1 is harassing her daughter, therefore, he will not send her again to the matrimonial home. Subsequent to this, after one month deceased committed suicide by setting herself on fire. He did not state any specific date, place and the time on which date Kishori told such thing to him. Kishori has also not supported his deposition. Thus the statement of this witness is also not helping to the prosecution.

The other witnesses are examined either with respect of the investigation or the papers prepared during such investigation.

13. So far as applicability of provision of presumption enumerated u/s 113-A of the Evidence Act is concerned, it is suffice to say that to invoke such provision, the prosecution has to prove some act of cruelty, committed by the appellants or any of them with the deceased within the period of seven years from the date of her marriage, and if, the allegation of cruelty is proved by the prosecution in such a manner then the provision of presumption could be invoked otherwise not. In the aforesaid former paras it had revealed that the prosecution has failed to prove any act of cruelty against any of the appellants, and in such circumstances, provision of Section 113-A of the Evidence Act, is not applicable to the present case. In such premises, the approach of the trial court in this regard is hereby held to be contrary to the existing law and the same is hereby set aside.

14. In view of the aforesaid by allowing this appeal, the judgment of the trial court along with the conviction and sentence awarded to the appellants, is hereby set aside and appellants are acquitted from the alleged charges.

15. Appellants are on bail as stated by the appellants" counsel. Their bail bonds are hereby canceled. The amount of fine imposed by the trial court, if deposited, be refunded to the appellants after proper verification.

16. The appeal is allowed as indicated above.