
(1995) 11 MP CK 0019
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 61 of 1991

Rajesh Kumar and Another APPELLANT
Vs
State of M.P. RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1996) 2 DMC 182 : (1996) 1 MPJR 65

Hon'ble Judges : Tej Shanker, J

Bench : Single Bench

Advocate : B. Raj Sharma, for the Appellant; G.A., for the Respondent

Final Decision : Dismissed

Judgement

T. Shankar, J.

This appeal has been preferred by the appellants /accused against the order of conviction and sentence passed against them under Sections 306 and 498A of the I.P.C. Both the accused persons were convicted u/s 306, I.P.C. and sentenced to 3 years rigorous imprisonment and a fine of Rupees 500/- each. They were further convicted u/s 498A and sentenced to 3 years rigorous imprisonment. Both the sentences are ordered to run concurrently. During the pendency of the appeal the accused/appellant Matadin died and his appeal abated vide order dated 20.10.94.

Briefly narrated the facts are that the deceased Meena, daughter of PW 1 Mohandas was married to accused/appellant No. 1 Rajesh Kumar about 4 or 5 years prior to the occurrence. Matadin was her father-in-law. Both of them used to commit cruelty upon her and harass her. They demanded a sum of Rs. 1500/- as dowry. Rajesh had also written letters in this regard to Mohandas and had also extended threats. The deceased, Meena, was burnt to death by the accused persons and no intimation was given to the father. He was informed after about

10 to 15 days by Smt. Gomti Devi. He thereafter went to Police Station Mehgaon and lodged a report. Usual investigation took place and a charge- sheet was submitted against the accused/appellants. The Trial Court considered the entire evidence produced before it and concluded that the prosecution has proved its case against the accused/appellants. It, therefore, convicted and sentenced them as aforesaid. Hence, this appeal.

Learned Counsel for the appellants contended that the prosecution has chiefly relied upon the alleged dying declaration recorded by the doctor. This dying declaration could not be relied upon because the circumstances brought on record go to show that she was not in a position to give a statement. There were extensive burns as stated by the doctor in his report as well. The learned Counsel for the appellant lastly argued that in any case as the accused Rajesh is a young person and was about 20 or 21 years of age at the time of occurrence, the benefit of probation be extended to him. He has also been in jail for about 15 days. Learned Counsel for the State contended that it is one of those cases where there is ample proof of the fact that the lady was driven by the accused person to commit suicide, she was tortured for not bringing money and this fact is amply proved. There is, therefore, no justification for extending the benefit of probation.

The deceased was admittedly the wife of the accused /appellant Rajesh Kumar and the daughter-in-law of the deceased/accused Matadin. She died due to burn injuries. The prosecution examined PW 9 Lallobai, mother of the deceased and PW 13 Mohandas, father of the deceased. Both these witnesses have deposed that there was a demand of Rs. 1500/- by the accused persons. Accused/appellant Rajesh had also sent letters. There are several letters on record which go to show that there was a demand of Rs. 1,500/-. It corroborates the statement of the two witnesses. The most important material on record to show that the lady was being subjected to cruelty is the dying-declaration recorded by Dr. Virendra Prakash Sharma (PW 8). A perusal of the statement of PW 8 goes to show that he was Asstt. Surgeon in Primary Health Centre, Mehgaon, on 7.5.86 and on that dated at 11.55 a.m. Constable Keshavdayal of Police Station Mehgaon brought Meena before him for Medical examination. He had medically examined her and had found burn injuries. Her condition was precarious but she was in senses. He gave her first aid, on the request of the police he recorded dying declaration on the same day at 11.55 a.m. and at that time compounder O.P. Gupta and Nurse T. Munjal were present. The lady was in a fit state to give statement. He has narrated the statement made by the deceased. A perusal of this statement clearly shows that the lady stated that there had been regular quarrel for 15 days. Her husband used to say that she should die and if she did not agree, he will abscond and leave her. He was also performing a second marriage. In the morning a ten rupees note was lost by her. There was exchange of words with her Devar. Her husband said that he will die. She said that he should not. Her father-in-law threw tea over her. There was also a quarrel with the Devar. She, therefore, put herself to fire. This statement clearly goes to show

the circumstances under which she burnt herself. The learned Trial Court considered the entire material on record and also took into consideration the provision of Section 113A of the Indian Evidence Act. After considering the entire material in greater detail it held that the case against the accused Rajesh Kumar and Matadin u/s 306 as well as u/s 498A was proved. I have already mentioned the statement of the two witnesses as well as the dying declaration and have also gone through the entire material on record. After carefully considering it I agree with the learned Trial Court that the prosecution has satisfactorily proved its case against the accused persons. There is, therefore, no scope for interference in the order of conviction passed by it.

As far as the question of sentence is concerned, looking to the nature of the findings and facts that there has been persistent cruelty I do not think that it is a fit case in which the benefit of probation should be extended. The accused remained in jail only for 18 days as pointed out by the learned Counsel for the appellants and as such there is no justification for any interference in the sentence awarded as well.

The appeal, therefore, fails. The order of conviction and sentence passed by the learned Trial Court is confirmed. The appellant/accused Rajesh Kumar shall surrender forthwith and shall be taken into custody to serve out his sentence.