
(2013) 02 MP CK 0108

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1140 of 1997

Sarala Vasudeva

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2013) 2 DMC 389

Hon'ble Judges : M.A. Siddiqui, J

Bench : Single Bench

Advocate : Mahendra Choubey, for the Appellant; S.P. Rai, PL, for the Respondent

Final Decision : Allowed

Judgement

M.A. Siddiqui, J.—This appeal has been filed by the appellant feeling aggrieved by the judgment and order of conviction dated 27.5.1997 passed by First Additional Sessions judge, Mudwara, Katni in Sessions Trial No. 87/1988 by which appellant has been convicted for the offence punishable under Sections 498A of IPC and has sentenced to rigorous imprisonment for 3 years with fine of Rs. 500. In default of payment of fine amount appellant further suffer two months rigorous imprisonment. It is admitted fact that appellant is the mother-in-law of deceased Sapna, whose marriage was performed with the son of the appellant namely Suhash Vasudeva, who was also tried with the appellant in the aforesaid Sessions Trial, but he was acquitted from the charges of u/s 304B with the appellant and also charges framed against the appellant for the offence u/s 498A of IPC, by the alleged judgment and order of conviction dated 27.5.1997.

2. In brief, the case of prosecution against the appellant, deceased Sapna was married with Suhash Vasudeva, who is son of the appellant. On 20.5.1986 at Katni Sapna has died due to the burn injury and her dying declaration was recorded by Asstt. Surgeon Dr. T.N. Khare (P.W.-2) in which she has stated that

she was burnt due to the accidental and her clothes caught fire at the time of cooking. Thereafter she was shifted to Jabalpur Medical College, she has been treated and she succumbed to her injury on 28.5.1986. Later on father of the deceased Sapra has filed written complaint with the police station, the death of his daughter was not accidental but her death of unnatural and harass her. She was continuously treated with cruelty of both mentally and physically and demand of dowry was made from her. Demand of dowry was not fulfill so, she died unnatural death.

3. On the basis of complaint, the case under Sections 304B and 498A of IPC was registered and case was trial with the appellant together with Son Suhash Vasudeva but as no charge of demand of dowry was proved so Suhash Vasudeva, son of the appellant was acquitted from the offence under Sections 304B and 498A of IPC, but appellant has been punished for the offence u/s 498A of IPC, accordingly as above.

4. Being feeling aggrieved by the judgment and conviction passed by the First Additional Sessions Judge, Mudwara, Katni against the appellant, so he has filed this appeal on the followings grounds:

(i) That no offence u/s 498A of IPC against the appellant is made out. The learned Judge has held that the death was accidental and there was no demand of any dowry hence as per explanations u/s 498A of IPC no sentence against the appellant can be awarded.

(ii) The learned Trial Judge further committed an error of law in relying on the testimony of letters which were written by Sapna three years back. There was no cruelty or any incident in the said letters. Sapna herself in her dying declaration did not say anything. Hence the findings based on the said letters are perverse and conviction cannot be based on the said findings.

(iii) The learned Trial Judge completely ignored the facts that Sapna was living separately with her husband for the last four years. He further ignored other evidence and letters written by Sapna herself.

(iv) That cruelty cannot be established on the basis of prior incidents of last 3 to 4 years without any incidents of recent time and also conduct of the witnesses.

(v) The learned Trial Judge committed an error by relying on the evidence of other witnesses who were the family members of Sapna and letters and later on filed the F.I.R.

(vi) That judgment of the Trial Court is against the facts evidence on record of the case and against the law. The appellant cannot be convicted u/s 498A of IPC.

(vii) That the learned Judge awarded maximum punishment to the appellant ignoring her age and facts of the case.

(viii) The appellant has deposited the fine with the Court and on her application the learned Trial Judge suspended sentence up to 16.6.1997 and released the

appellant on bail.

5. I have heard both the parties and perused the original record. The main points for consideration are as under:

- (i) Whether the Trial Court has erred in appreciating the evidence.
- (ii) Whether the findings of guilt are against the facts and circumstances.
- (iii) Whether the appeal is wholly or partially admissible.

6. Appellant has acquitted from the charge of u/s 304B of IPC and no appeal has been preferred against the acquittal of son of the appellant as well as the appellant, so the order of acquittal for the offence u/s 304B of IPC as become final.

7. Appellant abjured the guilt and contended that she has been falsely implicated in the case.

8. To substantiate its case, prosecution examined by Dr. A.K. Yadu (P.W.-1), Dr. T.N. Khare (P.W.-2), Shakuntala (P.W.-3), Satya Sharma (P.W.-4), mother of the deceased, K.C. Sharma (P.W.-5) father of the deceased, U.P. Singh (P.W.-6) S.D.O. Police, who conducted the partially investigation. M.L. Bhanot (P.W.-7), Yashoda Bai (P.W.-8), Meera Bai (P.W.-9), Indra Pal (P.W.-10), T.C. Ushre (P.W.-11) Sub-Inspector, Investigation Officer, Indra Sharma (P.W.-11), H.N. Upadhyay (P.W.-12), Sub-Inspector of Police, who conducted the partially investigation. Keshav Prasad (P.W.-13), Naresh Kumar Sharma (P.W.-14) Sub-Inspector of Police.

9. Learned Counsel for the appellant has submitted that Smt. Satya Sharma (P.W.-4), and K.C. Sharma (P.W.-5) mother & father of the deceased and M.L. Bhanot (P.W.-7) neighbour, Meera Bai, another neighbour have stated that appellant used to do cruelty to deceased her life time and statements are omnibus and other witnesses including the Indira Sharma (P.W.-11) and Naresh Kumar Sharma (P.W.-14) sister and brother of the deceased and Shakuntala (P.W.-3) neighbour have not stated even a single word against the appellant.

10. Learned Counsel for the appellant further submitted that the statement of mother of the deceased Satya Sharma (P.W.-4) and father of the deceased K.C. Sharma (P.W.-5), M.L. Banot (P.W.-7), Meera Bai (P.W.-9) are given omnibus statement that deceased Sapna @ Kamlesh used to tell them that she was treated with cruelty by the appellant. This statement is not omnibus and no particular statement has admitted. Moreover, the statement made by Sapna @ Kamlesh don't come of the definition of dying declaration u/s 32 of the Evidence Act. As death was accidental and cruelty did not resulted into death.

11. Learned Counsel for the appellant also submitted that K.C. Sharma (P.W.-5) father of the deceased stated that she used to write letter Sapna @ Kamlesh Exs. P-3, P-4, P-5, P-6, P-7, P-8, to Ex. P-17, remaining letters Ex. P-3, P-4, P-5 written by husband of appellant, i.e. father-in-law. It has been admitted in

para-4 of cross-examination Ex. P-7 to not complaint has been made and Ex. P-16 & 17, deceased wrote that she was well and good. No documentary evidence has been produced.

12. Learned Counsel for the appellant submitted that M.L. Bhanot (P.W.-7) has narrated the prosecution he has gone and statement of parents of the deceased came and he went for Shahdol and deceased met her parents she has already abortion and she complained that to take her otherwise husband and mother-in-law will kill her. On this point statement of Satya Sharma (P.W.-4) and K.C. Sharma (P.W.-5) are very much silent. Had such incident took place before they would have narrated.

13. Learned Counsel for the appellant submits that as per the statement of Meera Bai (P.W.-9) and K.C. Sharma (P.W.-5) deceased of the father, deceased was residing at Katni with her husband and appellant was residing with her husband at Shahdol, From this fact that both were residing separately so continuously cruelty could not be done by the appellant.

14. I am fully agreed with the arguments advanced by the learned Counsel for the appellant and I have gone through the statements of prosecution witnesses, the statements are omnibus and no particular date has been shown, the statement of R.A. Napit (D.W.-1) Sub-Post Master, it has been stated that National Savings Certificate were purchased in the name of daughter and in name of deceased was caretaker. It is very much clear that if deceased could have been treated cruelly, so she would not have purchased National Saving Certificate in her name.

15. As for as death is concerned, the learned Trial Court has given the findings of death was accidental and appellant and co-accused Suhash have been acquitted from the charges u/s 304B of IPC. It is pertinent to note that as per the statement of Dr. A.K. Yadu (P.W.-1) and Dr. T.N. Khare (P.W.-2) deceased given the dying declaration vide Ex. (P-2) in which she has stated that she got burnt due to the accidental fire as at that time she was making food and endless statement was not narrated even in the single word of cruelty.

16. Therefore, from the above discussion, it is very much clear that the case of prosecution was not proved beyond the reasonable doubt and learned Trial Court has committed an error and in wrongly appreciated the evidence and drawn conclusion against the facts and circumstances. Hence, this appeal is allowed by giving the benefits of doubt and cruelty is not done by the appellant. Appellant is acquitted from the charge u/s 498A of IPC. Consequently, the judgment dated 27.5.1997 passed in Sessions Trial No. 87/1988 by First Additional Sessions Judge, Mudwara, District Katni is hereby set aside.