
(2000) 01 MP CK 0003

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 644 of 1989

Satyabhan Singh and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

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

Citation : (2000) 2 DMC 397

Hon'ble Judges : P.N.S. Chauhan, Acting C.J.

Bench : Single Bench

Advocate : A.J. Pawar, for the Appellant; Dilip Naik, Dy.A.G., for the Respondent

Judgement

D.P.S. Chauhan, Ag.C.J.

1. The appellants-Satyabhan Singh and Smt. Sushila Singh were convicted in Sessions Trial No. 78/88, by. the End Additional Sessions Judge, Rewa, vide judgment and order dated 30.6.1989, whereby they were convicted for commission of offence punishable u/s 498A of the Indian Penal Code and the appellant No. 1-Satyabhan Singh was sentenced to two years" rigorous imprisonment together with fine of Rs. 500/-, and in default of payment of fine, he was required to undergo six months" rigorous imprisonment and the appellant No. 2-Smt. Sushila Singh was sentenced to undergo one year rigorous imprisonment together with a fine of Rs. 1,000/-, and in default of payment of fine, she was required to undergo rigorous imprisonment for six months. Aggrieved from their conviction and sentence, the appellants preferred appeal before this Court which has come up for final hearing.

2. Both the appellants were charged that the accused Satyabhan Singh being the husband of the deceased and the accused Smt. Sushila Singh being the Jethani (wife of elder brother of Satyabhan Singh) subjected the deceased Mamta to cruelty driving her to commit suicide, committed offence punishable u/s 498A, I.P.C. and also instigated deceased Mamta to commit suicide as a result of which

she consumed poison and died, committed offence punishable u/s 306, I.P.C. The Trial Court acquitted the appellants of the offence punishable u/s 306, I.P.C. and convicted them for the commission of offence punishable u/s 498A, I.P.C.

3. The factum of marriage of Smt. Mamta with the appellant No. 1-Satyabhan Singh is not in dispute. She was a legally wedded wife of appellant No. 1. The appellant No. 2 Smt. Sushila Singh is the wife of the brother of Satyabhan Singh. Shri Satya Pratap Singh and all these persons were living together in the same house. On 27.6.1987, Mamta wife of Satyabhan Singh committed suicide consuming sulphas tablets. It is also not in dispute that the parental home of the deceased Mamta was in village Nayagaon, Police Station Mangaon, District Rewa. Smt. Phoolmati is the mother of the deceased Mamta and Manbharan Singh is the brother of the deceased. The marriage of the deceased took place within a period of seven years from the date of the incident. The father of the appellant No. 1 Rajivlochan Singh was also living with them.

4. The post-mortem of the dead body of the deceased Mamta was conducted by Dr. L.N. Tamrakar and the cause of death could not be ascertained. The viscera was preserved and was sent to the Chemical Examiner, Rewa, who found aluminium phosphate (Sulphas) in liver and kidney. The post mortem report is Ex. P/I.

5. The prosecution case was that 5 to 9 years earlier to the incident the deceased Smt. Mamta was married to appellant No. 1. Her husband was not keeping good relations with her, as he was entangled with the appellant No. 2 and was having illegitimate relationship with her. Satya Pratap Singh, husband of the appellant No. 2, was in service at Bilaspur. The deceased Mamta was not given proper food and was tortured and she haying disgusted with the cruelty by the appellant Nos. 1 and 2, committed suicide.

6. Manbodh Singh (P.W. 2) lodged a report of unnatural death of Mamta at the Outpost Lalgawan, Police Station Garh, which was registered at Serial No. 0/87 and it was sent to Police Station Garh, for registration, where Durga Prasad (P.W. 4) registered the same as Merg No. 23/87 on 27.6.1987. The Panchnama (Ex. P/2) of the dead body was prepared. The site plan (Ex. P/3) was prepared, vide Ex. P/3 and the dead body of the deceased Mamta was sent to post mortem and the post mortem was conducted by Dr. L.N. Tamrakar (P.W. 1) on 28.6.1987.

7. The prosecution examined as many as ten witnesses. Dr. L.N. Tamrakar, who conducted the post mortem of the deceased Mamta, was examined as P.W. 1. Manbodh Singh, Sarpanch of village Patai, who gave merg intimation (Ex. P/4) on 28.6.1987 at Lalgawan Outpost of Police Station Garh, was examined as P.W. 2; M.R. Asudani, Deputy Superintendent of Police, who investigated the crime, was examined as P.W. 3; Durga Prasad, Police Constable, who registered the Merg Intimation (Ex. P/4) at the Outpost Lalgawan, was examined as P.W. 4; Bhaiyalal Singh, who is an independent witness, was examined as P.W. 5; Phoolmati, the mother of the deceased Mamta, was examined as P.W. 6;

Shivasharan, aged about 13 years, who is an independent witness, was examined as P.W. 7; Manbharan Singh, brother of the deceased, was examined as P.W. 8; Mahavir Singh Chandel, Station House Officer, Police Station Garh, who recorded the report on the basis of the letters, Ex. P/7 and Ex. P/8, addressed to the Superintendent of Police and the District Magistrate, Rewa was examined as P.W. 9 and Mishrilal Singh, ASI, who took down the Ex. P/4, and prepared the Lash Panchanama (Ex. P/9) and seized the sealed bottle of viscera (Ex. P/10), was examined as P.W. 10.

8. The defence was that of denial of involvement in the crime and the case set up was that Mamta committed suicide on her own and not because of cruelty. In defence, Haribharan, a neighbour of the appellants, was examined as D.W. 1; Akhand Pratap Singh, a person at whose residence the appellant No. 1 was shown to be present at the time of incident, was examined as D.W. 2, and Rajiv Lochan Singh, father of the appellant No. 1 was examined as Court Witness No. 1.

9. The appellants were charged for commission of offence punishable under Sections 498A and 306 of the I.P.C. They were acquitted of the charges u/s 306 of I.P.C; and were convicted for charge only u/s 498A of the I.P.C.

10. The entire prosecution case hinges upon the evidence of the mother of the deceased Phoolmati (P.W. 6) and the brother of the deceased Manbharan Singh (P.W. 8) and also Manbodh Singh (P.W. 2). Rest of the witnesses are all of formal nature.

11. Heard the learned Counsel for the appellants. Learned Counsel for the appellants submitted that since the appellants have been acquitted of the charge u/s 306 of I.P.C., they cannot be convicted u/s 498A of the I.P.C. Second submission is that after the death of Mamta, the matter was not reported to the police by any of the relations of the deceased for a long duration and the report by anonymous letters (Ex. P/7 and Ex. P/8), was made after about two months to the Superintendent of Police, Rewa and the District Magistrate, Rewa, respectively. The story set up by the prosecution cannot be given credence as, it was not reliable.

12. The learned Counsel for the appellants placed the statement of Manbodh Singh (P.W. 2) and submitted that abatement is defined in Section 107 of the I.P.C. which is as extracted below :

"Section 107. Abatement of a thing-A person abets the doing of a thing, who-

First-Instigates any person to do that thing, or

Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, of

Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation No. 1-A person who, by wilful misrepresentation, or by wilful

concealment of a material fact which he is bound: to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing

Explanation No. 2-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and (hereby facilitates the commission thereof, is said to aid the doing of that act."

and, for abatement firstly there must be an instigation by a person to do that thing and not likelihood to do that thing in a positive manner. Secondly, there must be engagement of one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; and thirdly, there must be intentionally aiding, by any act or illegal omission, the doing of that thing which is punishable u/s 306 of the I.P.C., whereas u/s 498A of the I.P.C., the offence is confined to a family and is confined to the cruelty. Section 498A is as extracted below :

"Section 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."

It says that whoever being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. The term "cruelty" has been explained as 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, and also 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. Thus, the cruelty is of two categories; category (a), and category (b). The present case is of category (a). The offence u/s 498A of the I.P.C. is an independent offence and it confines to the husband or relative of the husband of woman who subjects such Woman to cruelty.

So far as this submission is concerned, I do not find any logic that an offence u/s 498A of the I.P.C. is not independent of Section 306 of the I.P.C. The first submission, thus, fails.

13. The second submission is regarding delay in lodging the report. The facts are that Mamta died after consuming sulphas on 27.6.1987 and on the same day, P.W. 2 Manbodh Singh lodged a report at the Outpost-Lalgawan of Police Station Garh, District Rewa, regarding unnatural death of Mamta, which is Ex. P/2 and registered at Serial No. 0/87 and was sent to Police Station Garh on the same day, where it was registered at Serial No. 23/87, which is marked as Ex. P/4.

14. On the basis of report (Ex. P/4), the dead body was seized. The post mortem of dead body was conducted by Dr. L.M. Tamrakar (P.W. 1) and the post mortem report is Ex. P/1. The viscera was also preserved and was sent to Chemical Examiner, who found Aluminium Phosphate in liver and kidney. The report of the Chemical Examiner was not marked as exhibit, though it is on the record. After this report, police investigation was not completed, though a report was also lodged by the mother of the deceased Phoolmati (P.W. 6), at Police Station Garh on 28.6.1987. The police did not proceed further in the matter uptill, the anonymous complaints/ letters dated 24.7.1987 were sent to the Superintendent of Police and District Magistrate, Rewa, and on the basis of which, F.I.R. (Ex. P/5) was registered and the investigation was carried over.

15. So far as the lodging of report is concerned, the report regarding unnatural death was lodged on the same day by Manbodh Singh (P.W. 2) and the next day, a report was lodged by Phoolmati, mother of the deceased, but the case was not taken to its conclusion until the reports dated 24.7.1987, which are Ex. P/7 and Ex. P/8, were received, on the basis of which, Ex. P/5 was registered. So, it cannot be said to be a case where no report was lodged for a period of one month. Thus, the second submission has no substance.

16. Learned Counsel for the respondent/State submitted that defence theory was rightly disbelieved by the Trial Court. Though Manbodh Singh (P.W. 2), wanted to lodge the report and wanted to conciliate the offence and, therefore, set up case regarding the age of the deceased that she was 30 to 32 years old. The Trial Court came to the conclusion that at the time of marriage, the age of the deceased Mamta was not more than 18 to 19 years. The appellant No. 1-Satyabhan during the course of his examination u/s 313 of the Criminal Procedure Code accepted the age of the deceased that at the time of marriage, she was 20 years of age.

17. Learned Counsel for the State also submitted that the evidence on record was established cruelty done to the deceased by the appellants. The appellant No. 1 was not having marital relationship with his wedded wife, the deceased, but was having illicit relationship with the appellant No. 2, who was the wife of his brother, and on account of this, she was treated with cruelty and she was also not given the proper treatment, nor was being supplied proper food. She told her

mother about \t that her husband, the appellant No. 1, gave beating to her and that her husband and her Deorani, the appellant No. 2, both tortured her.

18. The theory of defence that the deceased Mamta on the basis that she grew in age and was not having any issue, was disbelieved by the Trial Court. Phoolmati (P.W. 6), the mother of the deceased, and Manbharan Singh (P.W. 8), the brother of the deceased, have established the prosecution case beyond reasonable doubt.

19. Learned Counsel for the appellants submitted that it is a case where the appeal is being heard after about 10 years, though the incident relates to June, 1987, and he submitted that in these circumstances, it would be proper if the sentence of imprisonment is reduced and instead of this, fine is imposed.

20. Heard the learned State Counsel. Learned State Counsel has no objection, if the sentence of imprisonment is reduced to three months, as long pendency of the case would be a sufficient mitigating factor.

21. In these circumstances, except that, the fine is imposed to the extent of Rs. 2,000/- on the appellant No. 1. The appellants have not undergone any sentence of imprisonment because they are on bail and u/s 498A, the sentence of imprisonment is a must simultaneously with fine.

22. In view of the above, the appeal partly succeeds. So far as conviction of the appellants is concerned, it is maintained but so far as sentence is concerned, it is modified and the sentence of imprisonment as imposed on appellant No. 1 is reduced to three months" RI and the sentence of imprisonment as imposed on appellant No. 2 is reduced to 15 days" RI but the fine of Rs. 2,000/- (Rs. two thousand only) is imposed on each of the appellants. In default of payment of fine, they are required to undergo sentence of rigorous imprisonment, for three months. The fine amount be deposited within a period of two months from today. The appellant are on bail. Their bail bonds are cancelled. They shall be taken into custody to serve out the sentence as has been imposed on them.