
(2009) 11 MP CK 0029
In the Madhya Pradesh High Court

Shriram and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

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

Citation : (2009) 11 MP CK 0029

Hon'ble Judges : Sushma Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sushma Shrivastava, J.—Appellants have preferred this appeal challenging their conviction and order of sentence passed by Sessions Judge, Seoni in S.T. No. 127/98, decided on 22.11.99.

2. Appellants have been convicted u/s 498-A/34, 306/34 of IPC and each of them sentenced to rigorous imprisonment for three years and five years for the respective offences by the impugned judgment. Both the sentences were directed to run concurrently.

3. According to prosecution, deceased Sarita Bai (hereinafter referred to as "deceased") was married to appellant No. 1 Shriram Kurmi of village Singhori on 23.4.98. Appellants No. 2 & 3 are the father and mother of appellant No. 1. Appellants had demanded a vehicle in the marriage of the deceased from her father. Chintaman, the father of the deceased, however, gave an M-80 moped, fan, TV and other articles as per his capacity in the marriage of his daughter. The M-80 Moped developed mechanical defect after sometime, so it was sent back to the parents of the deceased for getting it repaired. Thereafter, appellants began harassing the deceased for the vehicle and they subjected her to ill-treatment and cruelty. Appellant No. 3, the mother-in-law of the deceased also taunted her about her dark complexion and for bringing small vehicle in dowry. On 12.7.98

when appellant No. 2 Vishnu Prasad, the father-in-law of the deceased came to her father's place to take her to her matrimonial home, she was not willing to go back and complained to her parents that appellants tortured and ill-treated her for vehicle and on account of her dark complexion, but they somehow sent her with appellant No. 2 Vishnu. On 14.7.98 deceased Sarita Bai died at her in-laws' place under suspicious circumstances, while she was hale and hearty when she came back from her parents' house on 12.7.98. The intimation of her death was given to the Police by Rajkumar, the brother of the deceased, whereupon merger intimation was recorded at Police Station Bandol, District Seoni and merger inquest report was prepared. The dead body of deceased was sent for postmortem examination. Her viscera was preserved and sent for chemical examination. As per report of chemical examiner, Endosulfan was found present in her viscera. After completion of merger inquiry, offence was registered against the appellants and was investigated. After due investigation, appellants were prosecuted u/s 304-B, 498-A of IPC and were put to trial.

4. Appellants were charged u/s 498-A/34, 304-B/34 of IPC and alternatively u/s 306/34 of IPC.

5. Appellants abjured the guilt and pleaded false implication.

6. According to the appellants, upon the death of Sarita Bai, her father and brother came to village Singhori and asked back the articles given in marriage and an amount of rupees twenty thousand as expenses incurred in the marriage; appellants were ready to return back the articles, but they insisted for a receipt and declined to give rupees twenty thousand. Therefore, both father and son threatened the appellants to send them to jail and falsely implicated them.

7. Learned Sessions Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted all the appellants of the charge u/s 304-B/34 of IPC, but found them guilty for committing offence u/s 498-A/34, 306/34 of IPC, convicted and sentenced them as aforesaid by the impugned judgment, which has been challenged in this appeal.

8. Arguments of both the sides were heard. Record of the lower court perused.

9. It was not disputed that deceased Sarita Bai was married to appellant No. 1 Shriram on 23.4.98. It was also no longer disputed that deceased Sarita Bai died in her matrimonial home within three months of her marriage. It is also borne out from the testimony of Rajkumar (P.W-3) coupled with the evidence of Sub Inspector K.K. Narvare (P.W-4) that the intimation of the death of deceased Sarita Bai was given to Police Station Bandol by her brother Rajkumar (P.W-3), whereupon merger intimation (Ex.P-3) was recorded and merger inquest report (Ex.P-2) was prepared on 14.7.98.

10. Dr. Azad Kumar Saravagi (P.W-5), who conducted the postmortem on the dead body of deceased Sarita Bai on 15.7.98, found that her nails were cyanosed, throat and trachea were full of white froth, her lower esophagus and

stomach were highly congested and eroded, fluid smelling like insecticide was also present and the cause of her death was internal asphyxia. To confirm the death by poisoning, her viscera was preserved, which was sent for chemical examination. Dr. Azad Kumar Saravagi (P.W-5) also opined that there was possibility of suicidal death rather than homicidal death. It is also evident from the report of the chemical examiner that Endosulfan was found present in her viscera.

11. It is thus clear from the aforesaid evidence, which remained virtually un rebutted that deceased Sarita died within seven years of her marriage due to poisoning at the house of the appellants. There was no such case, nor any material on record to indicate that it was a case of accidental or homicidal death, therefore, it could be safely inferred that deceased committed suicide by consuming insecticide at the house of the appellants within seven years of her marriage.

12. The next crucial question to be seen is whether the appellants subjected the deceased to cruelty and abetted the commission of suicide by her?

13. There is no direct evidence as such against the appellants either of the cruelty meted out to the deceased or abetment of commission of suicide by her. The conviction of the appellants is based mainly on the testimony of Chintaman (P.W-2) and Rajkumar (P.W-3) and on the strength of presumption drawn u/s 113-A of Evidence Act. P.W-2 Chintaman is the father of the deceased and Rajkumar (P.W-3) is her brother to whom deceased allegedly made oral complaints. According to these witnesses, deceased used to complain to them of the ill-treatment and harassment in connection with unlawful demand meted out to her by the appellants.

14. Learned Counsel for the appellants submitted that the trial court gravely erred in placing implicit reliance on the testimony of related witnesses and it failed to appreciate that their evidence was inter se contradictory and there was complete omission of certain part of their deposition in their police statements, which demolished the entire case of prosecution regarding cruelty or harassment to the deceased in connection with unlawful demand by the appellants.

15. Learned Counsel for the appellants also submitted that the trial court failed to consider that there was no demand of dowry as such and nor was there any evidence of harassment of the deceased in connection with the demand of dowry or any other unlawful demand. Learned Counsel for the appellants further submitted that the conclusions drawn by the learned trial judge were based on conjectures and surmises without there being any cogent and positive evidence of cruelty or harassment to the deceased in connection with unlawful demand of property. Learned Counsel for the appellants strenuously urged that the conclusions drawn in para 12 of the impugned judgment were based on no evidence and the trial judge proceeded on assumption without putting any such facts to the appellants during their examination u/s 313 of Cr.P.C. and no

presumption u/s 113-A of the Evidence Act could be drawn against the appellants in the facts and circumstances of the case. Reliance was placed on the decisions rendered in the case of Arvind Singh Vs. State of Bihar, , Ramesh Kumar Vs. State of Chhattisgarh, , Girdhar Shankar Tawade Vs. State of Maharashtra, and Ajab Singh v. State of M.P. reported in 1998 2 MPWN 25 .

16. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellants.

17. In view of the submissions made by learned Counsel for the parties, the entire evidence on record is closely examined. As per statement of Chintaman (P.W-2), the father of the deceased, he had given an M-80 moped in the marriage of his daughter as demanded by Jagannath, the maternal uncle of appellant No. 1, but after marriage the same was spoiled by appellant No. 1 and returned to him for getting it repaired. According to Chintaman (P.W-2), when Sarita Bai came to his place she had told him that her mother-in-law Shyama Bai used to tell her that she was not fit for their family and she should come back only when she brings back the vehicle. Chintaman (P.W-2) also deposed that when appellant No. 1 Shriram came to take back his daughter he told that his mother, appellant No. 3, had asked that he should bring back Sarita only when she brings back the vehicle. Then Chintaman (P.W-2) sent the appellant No. 1 to Seoni to bring back the vehicle lying for repairs, but the company did not deliver the vehicle at that time. Appellant No. 1 Shriram then went back to his place straightway and did not return to take back Sarita. It was also stated by Chintaman (P.W-2) that when Sarita came last before her death, she was asked by the appellants either to bring the vehicle or five thousand rupees. According to Chintaman (P.W-2), his daughter had told him that her mother-in-law Shyama Bai ill-treated her and appellants did not permit her to take tea in the morning and she was made to work in the field, fill water, throw cow-dung and other manual work like grinding etc.

18. However, when Chintaman (P.W-2) was cross- examined, he admitted that when the deceased came to his place in the beginning for two-three times, she did not make any complaints against the appellants. He was also contradicted with his police statement (Ex.D-1) with regard to omission of the statement that deceased was asked to bring five thousand rupees or the vehicle. He was also contradicted with his police statement (Ex.D-1) with regard to the omission of his statement that the deceased told him that her mother-in-law Shyama Bai used to tell her that deceased was not fit for their family and she should come back only if she brings back the vehicle with her and not otherwise. In view of these omissions, it is aptly clear that Chintaman (P.W-2) tried to make improvements in his statement regarding allegations with regard to demand of rupees five thousand in lieu of the vehicle and other allegations pressurising his daughter to come with the vehicle and not otherwise.

19. Moreover, Chintaman (P.W-2) also admitted in his cross-examination that the vehicle given by him had developed some problem within a month and therefore,

appellant Shriram brought back the vehicle and asked him to get it repaired at the place from where it was purchased. Learned Counsel for the appellants was right in his submission that if the vehicle had developed some problem or mechanical defects within a month, there was nothing wrong if it was brought back for getting it repaired at the place from where it was purchased, and it could not be termed as unlawful demand. Needless to repeat, that the allegations of demand for rupees five thousand in lieu of the vehicle is found to be an improvement and embellishment in the testimony of Chintaman (P.W-2) and is not acceptable.

20. As regards the allegation of oral complaints made by the deceased to her father Chintaman (P.W-2) regarding physical work and labour and not giving her tea etc., the same is also found to be an improvement in view of the admission made by Chintaman (P.W-2) in para 16 of his deposition that he narrated it for the first time in the court and not earlier to the Police. Moreover, even otherwise, physical work or labour as allegedly complained by the deceased to her father, which is common in the village culture, even if taken by the appellants from the deceased, can hardly amount to act of cruelty.

21. As regards the evidence of Rajkumar (P.W-3), the brother of the deceased, it also suffers from the same infirmities. According to Rajkumar (P.W-3), whenever Sarita Bai used to come to her parental house she used to tell that the appellants harassed her for a big vehicle like Rajdoot, ill-treated her and abused her. As per the evidence of this witness, Sarita Bai also used to tell that appellants addressed her "dkyh&dywVh" and said that "rsjs cki us dqaN ugh fn;k".

22. First of all, the father of the deceased, namely, Chintaman (P.W-2) never stated in his evidence that deceased made any such complaints to him that appellants demanded a bigger vehicle like Rajdoot and harassed her to bring a bigger vehicle. Secondly, Rajkumar (P.W-3) himself admitted in his cross-examination in para 7 of his deposition that he disclosed it for the first time before the court and not to the police that deceased told him that appellants used to ask for a bigger vehicle or addressed her as "dkyh&dywVh" etc. In view of his clear and categorical admission in para 7 of his deposition that he never stated to the police in his evidence regarding harassment of the deceased for demand of Rajdoot vehicle etc., same is found to be an afterthought and embellishment and can hardly be accepted as true.

23. Moreover, Rajkumar (P.W-3) himself admitted in his cross-examination that a demand for return of the articles given in the marriage was made from their side after the death of his sister and appellants asked for a receipt in writing, to which they did not agree. In view of these facts, the possibility of making invented and manufactured statements by both father, Chintaman (P.W-2) and son Rajkumar (P.W-3) against the appellants regarding harassment of the deceased for vehicle or allegations of cruelty to the deceased, cannot be ruled out.

24. Be that as it may, whatever the allegations are made by Chintaman (P.W-2)

and Rajkumar (P.W-3) against the appellants regarding ill-treatment or harassment of the deceased for vehicle, in the form of complaints made to them by the deceased, being deposed for the first time before the court and not earlier to the Police, cannot be accepted as correct and true beyond periphery of doubt.

25. Apposite to point out that no allegations regarding demand of vehicle, cruelty or harassment to the deceased were made by Rajkumar (P.W-3) in the merg intimation (Ex.P-3), which was recorded at his instance soon after the death of his sister Sarita Bai. Although the minute details are not necessarily required to be mentioned in the merg intimation, but when other details including the suspicion over the death of his sister were mentioned by Rajkumar (P.W-3) in merg intimation (Ex.P-3) while informing the death of his sister to the police, the allegations of harassment for vehicle or cruelty against the appellants too could have been mentioned by him. Absence of such allegations in merg intimation (Ex.P-3) also echo the possibility of it being an after thought.

26. More so, it also transpires from the evidence of Chintaman (P.W-2), that after her marriage deceased came to her parental house for three-four times from her in-laws" place and someone or the other used to come to take her back for her matrimonial home and last time appellant No. 2 Vishnu Prasad had taken her back, but no demand for any money or Rajdoot motorcycle was ever made to the father or brother of the deceased in person except that the vehicle lying for repairs in the company was asked for, which too could not be said to be unjustified when the vehicle was given for repairs in the company.

27. There is no such evidence on record that deceased ever complained to her parents or brother about any physical torture or beating to her at the hands of the appellants. No injury was also found by Dr. Azad Kumar Saravagi (P.W-5) on her postmortem examination. There was also no cogent evidence on record of either mental cruelty meted out to the deceased. Merely addressing her as "dkyh&dywVh" or telling her "rsjs cki us dqaN ugh fn;k" as alleged, can hardly be said to be such willful conduct so as to drive a woman to commit suicide or to cause grave injury to her life or limb.

28. There is also no such evidence on record that appellants in any way aided, instigated or entered into conspiracy or in any way abetted the commission of suicide by the deceased. Though it has come in the evidence that deceased committed suicide within three days after going to her nuptial home, but there is nothing on record to indicate that any of the appellants aided, instigated or abetted the commission of suicide by her, or subjected her to cruelty or harassment for any unlawful demand within those three days so as to attract the presumption u/s 113-A of the Evidence Act.

29. The mere fact that the deceased consumed poison within three days after arriving her matrimonial home, by itself, cannot lead to a presumption that deceased was subjected to mental or physical cruelty so as to drive her to commit suicide. No doubt, the death of deceased Sarita Bai occurred in the

dwelling house of the appellants, which ought to have been explained by them, but then the initial burden is on the prosecution to prove the guilt of the appellants beyond all reasonable doubts. The Apex Court in the case of Arvind Singh v. State of Bihar (supra) has also observed as under:

While it is true that the husband being the companion in the bedroom ought to be able to explain as to the circumstances but there exists an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Criminal jurisprudential system of the country has been to that effect and there is neither any departure nor any escape there from.

30. The trial court in the instant case proceeded on assumption that when the deceased consumed insecticide, which affected her internal organs leading to vomiting etc., appellants did not take her to the hospital for treatment which amounts to cruelty on their part, but such facts were not on record, nor any such questions were put to the appellants during their examination u/s 313 of Cr.P.C. so as to give them an opportunity for giving an explanation in this behalf, no presumption u/s 113-A of Evidence Act could be drawn against the appellants on this basis in the facts and circumstances of the case.

31. The legal position regarding presumption u/s 113-A of the Evidence Act was examined by their lordships in the case of Hans Raj v. State of Haryana reported in AIR 2004 SC 2790 and it was held as under:

Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. u/s 113-A of the Indian Evidence Act the presumption has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word "cruelty" in Section 498-A of IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

32. The Apex Court in it's three judges Bench decision rendered in the case of Ramesh Kumar Vs. State of Chhattisgarh, also held that presumption u/s 113-A of Evidence Act is not mandatory and is only permissive and the other

circumstances of the case used in Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption.

33. In the instant case, however, there was no cogent or positive evidence on record that appellants subjected the deceased to any such mental or physical cruelty so as to drive her to commit suicide. There was also no cogent, consistent or reliable evidence on record that appellants harassed the deceased in connection with or in order to coerce her to meet any unlawful demand of property. Whatever the allegations of cruelty or harassment attempted to be brought forth on record by way of alleged oral complaints made by the deceased to Chintaman (P.W-2) and Rajkumar (P.W-3), which are not found to be reliable and acceptable, were also not of such nature so as to drive a woman to commit suicide or to attract the presumption u/s 113-A of the Evidence Act. It would be profitable to refer to the following observation made by their lordships in the case of State of West Bengal Vs. Orilal Jaiswal and another, :

We may add here that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hyper-sensitive to ordinary petulance discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

34. Thus, as discussed above, when there was no positive, cogent and reliable evidence against the appellants that they subjected the deceased to cruelty or harassment in connection with any unlawful demand of property or in any way abetted the commission of suicide, neither any presumption u/s 113-A of Evidence Act could be drawn against the appellants, nor could they be convicted u/s 498-A or 306 of IPC. The conviction of the appellants u/s 498-A and 306 of IPC, therefore, cannot be sustained and deserves to be set aside.

35. Appeal is, therefore, allowed. The conviction of the appellants u/s 498-A and 306 of IPC and sentence passed on them are hereby set aside. Appellants are acquitted of the aforesaid charges.

36. Appellants are on bail. Their bail bonds shall stand discharged.