
(2018) 05 MP CK 0176

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.119, 179 Of 2007

Smt. Bittibai Alias Vidya & Ors

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 374, 482
Indian Penal Code, 1860 — Section 34, 300, 302, 304B, 498A

Citation : (2018) 05 MP CK 0176

Hon'ble Judges : SHEEL NAGU, J;VIVEK AGARWAL, J

Bench : Division Bench

Advocate : Madhukar Kulshrestha, G.S.Chauhan

Final Decision : Dismissed

Judgement

Vivek Agarwal, J

Both the appeals are being disposed of by this common judgment.

2. These two criminal appeals have been filed by the accused persons under Section 374 of Cr.P.C. being aggrieved by the judgment dated 9.1.2017

passed by the Court of 6th Additional Sessions Judge (Fast Track Court), Bhind, in Sessions Trial No.220/2005, whereby learned Additional Sessions

Judge has convicted all the four appellants of criminal appeal No.119/07 under the provisions of Section 498-A of IPC and sentenced them to suffer

two years RI with fine of Rs.500/- each and in default of payment of fine, 15 days RI while acquitting them from the charge under Section 304-B/34

of IPC.

3. Appellant Gopal in Criminal Appeal No.179/07 has been convicted vide aforesaid judgment under Sections 498-A and 302 of IPC with sentence of

two years RI and fine of Rs.500/- and life imprisonment with fine of Rs.500/- respectively with default stipulation.

4. Prosecution case in short is that deceased Malti was married with Gopal resident of village Rawatpura about five years prior to the date of incident

i.e. 6.5.2005. She was not having any child and for this reasons Gopal was beating her. On 6.5.2005 at about 10 am there was a dispute between the

deceased and Gopal on the issue of preparation of food, as a result Gopal had beaten her and thereafter poured kerosene oil kept in the lamp and put

her on fire. Her head, breast, hands etc. were burnt. She had thrown away her Sari, but Gopal had run away leaving her alone. She narrated the

whole incident to her father when Dehati Nalishi (Ex.P/4) was recorded by Malti. On the basis of such Dehati Nalishi, FIR (Ex.P/7) has been

recorded registering crime No.73/05.

5. It is important to point out that appellant No.1 in appeal No.119/07 is mother-in-law of the deceased, appellant No.2 in the same appeal is elder

sister-in-law, whereas appellant No.3 in that appeal is elder brother-in-law and appellant No.4 Asharam is uncle-in-law. Gopal in appeal No.179/07 is

her husband.

6. As per Dehati Nalishi (Ex.P/4) complainant Malti narrated the incident at about 12 noon on 6.5.05 to the effect that she is married to Gopal for last

five years. She has no children. She is not able to perform domestic work, as a result her husband beats her often and on that morning at about 10 am

after having tea, she was beaten on the issue of preparation of Chapatis. Thereafter, with a view to kill her, he had poured kerosene oil and lit the

matchstick, as a result she has sustained injury on her head, breast, hands etc. Thereafter, her husband ran away.

7. It has also come on record that dying declaration of deceased Malti was recorded by Dr. B.C.Jain (PW-11) as Ex.P/17 on 6.5.2005 at about 1.10

pm. In this dying declaration, she has made allegations against her mother-in-law, uncle-in-law, sister-in-law and brother-in-law.

8. On the basis of such crime being registered, matter was committed to the Sessions Court. Appellants abjured their guilt and prayed for complete

trial.

9. Learned counsel for the appellants submits that as far as appellants in appeal No.119/07 are concerned, they have been falsely implicated. He has

drawn attention of this Court to the statement given by Dr. B.C.Jain (PW-11) who has admitted in bottom part of para 4 of his cross-examination that when deceased was brought to him by her family members, he was not in a position to understand the words uttered by the deceased but with the help of a woman of the village standing by her side some words of dying declaration have been recorded by him. In view of such facts, he submits that dying declaration is a tutored document and does not inspire confidence. It is also submitted that in fact Dehati Nalishi too needs to be treated as dying declaration as it was recorded by the deceased herself. In view of such facts, he prays for allowing the appeal against the appellants, namely mother-in-law, uncle-in-law, brother-in-law and sister-in-laws, under the provisions of Section 498-A of IPC. It is submitted that there is no allegation either in Dehati Nalishi or FIR or the dying declaration in regard to demand of dowry. Nature of cruelty is such that it has been exaggerated and not supported by any documentary or other evidence.

10. It is also submitted that the prosecution had in all examined 12 witnesses, out of which Tularam (PW-1) is a witness in front of whom spot map was prepared and he has turned hostile. Bhoore Singh (PW-2) is also a witness to the spot map and has been declared hostile. Rajesh Sharma (PW-3) is SHO at police Station, Gormi, and according to him, he had conducted the investigation and taken statement of Anguri Bai wife of Shersingh Narwariya. Anguribai is PW-4 and is mother of the deceased Malti. Her case diary statement is Ex.D/1. She has deposed that demand of a motorcycle and Rs.50,000/- was made by the accused persons and they used to beat her daughter and in fact on the fateful day Awdhesh and Manto caught hold of Malti and Gopal put her on fire. She submits that this information was received by her husband at Gormi. However, in cross-examination she has admitted that Malti after marriage stayed in her house for about 4 years and her stay at her in-laws place was very short i.e. for a duration of 1 year. There is lot of variance in the statement given by her to the police under Section 161 of Cr.P.C. and the statement given before the Court. In case diary statement, there are no allegations of holding of the deceased by Awdhesh and Manto and putting her on fire by Gopal, thus, all the statements given in the form of exaggeration need to be ignored. It is also submitted that in fact Asharam was beaten by the relatives of the

deceased when he had gone to her village to call her and report in this regard is Ex.D/2 dated 9.4.03. This matter was reported by him to the police

vide Ex.D/3 on 17.10.02.

11. It is further submitted by learned counsel for the appellants that learned Sessions Judge has referred to police Statement of deceased Malti in para

39 of its judgment, but no such statement is on record. It is submitted that deceased Malti was tutored in between before recording of her dying

declaration and that dying declaration cannot be used as a basis to convict the appellants under Section 498-A of IPC or Section 302 of IPC.

12. As far as element of cruelty is concerned from Dehati Nalishi it is apparent that allegations have been made in regard to Gopal in Dehati Nalishi

and there are no allegations against anybody else. It is further submitted that the deceased was not a mentally stable person, and therefore, all the

accused persons need to be acquitted. It is also submitted that statement of Shersingh contained in Ex.D/4 was recorded on 9.5.2005 after three days

of the incident and there is no date in the statement of Anguri Bai as to when it was taken, therefore, these statements could not have been used to

convict the appellants.

13. Learned Public Prosecutor for the State on the other hand submits that even if dying declaration is discarded as having been tutored, then also

advantage can be extended only to the appellants in appeal No.119/07 and no benefit can be derived by Gopal, appellant in appeal No.179/07.

14. As far as appellants in appeal No.119/07 are concerned, this Court is of the opinion that since there are no allegations of cruelty in the Dehati

Nalish and nothing prevented the deceased to narrate such act of cruelty on the part of those appellants, they have been wrongly convicted on the

basis of surmises and conjectures. One of the glaring example of surmises and conjectures is seen in para 39 wherein learned Additional Sessions

Judge has recorded that in police statement deceased had referred to her sister-in-law Mamta as Buratpur Wali, whereas there are no case diary

statements of the deceased on record. There is no mention of any act attributed to the appellants of appeal No.119/07 at the time of lodging of Dehati

Nalishi. Dr. B.C.Jain (PW-11) has admitted that condition of the deceased was not stable to call for an Executive Magistrate to record her dying

declaration and has further admitted that in the dying declaration there is an

element of variance inasmuch as words mumbled could not be gathered by Dr. B.C.Jain (PW-11) and a village woman was asked to act as an interpreter. Such village woman who acted as an interpreter between the deceased and the doctor B.C.Jain (PW-11) has not been examined. Non-examination of such interpreter exposes the case of the prosecution. Thus, this Court is of the opinion that in absence of any cogent and proved evidence in regard to cruelty meted out to the deceased by any of the family members, their conviction cannot be upheld. Such view of this Court also finds support from the judgment of the Supreme Court in the case of Preeti Gupta and another Vs. State of Jharkhand and another as reported in Â (2010) 7 SCC 667 wherein the Hon'ble Apex Court has held that in a matrimonial dispute if there is casual reference to family members of husband in FIR as co-accused in absence of any specific allegation and prima facie case against co-accused, proceedings can be quashed in exercise of powers under Section 482 of Cr.P.C.

15. As far as Gopal appellant in appeal No.179/07 is concerned, he is husband of deceased Malti. No defence witness has been examined to show that there was any plea of alibi. In fact onus was on Gopal to have proved that either he was not available at the scene of crime or that it was a sudden and grave provocation resulting in the incident. None of such ingredients have been found in the case, nor it has been proved by either party. In view of such facts, this Court is of the opinion that for appellant Gopal learned Additional Sessions Judge has rightly discussed and appreciated the evidence available on record and his appeal does not call for any further leniency. Appellant Gopal has not been able to discharge the burden in regard to his conduct as to why he had run away from the spot. He was required to either demonstrate that he was not available at the spot or if it was a case of suicide or accidental fire, then what steps were taken by him to help the deceased. Since there is no such material on record and there is direct allegation on appellant Gopal to have put the deceased on fire after beating and there are anti- mortem injuries on the dead-body as has been noted in the postmortem report Ex.P/12 by Dr. B.C.Jain (PW-11), appellant Gopal has failed to make out a case under any of the exceptions given under Section 300 of IPC so to establish that it was a case of culpable homicide not amounting to murder, therefore, his conviction under Section 302

of IPC is upheld. The allegation of cruelty has also been found proved against this appellant, hence, his conviction under Section 498-A of IPC is also upheld.

16. Consequently, Criminal Appeal No.119/07 is allowed and conviction of the appellants under Section 498-A of IPC is set aside. Appellants are on bail, their bail bonds are discharged. Criminal Appeal No.179/07 filed by appellant Gopal is dismissed affirming his conviction under Sections 498-A and 302 of IPC. This appellant is in jail, he shall suffer the imprisonment as imposed by the learned trial Court.