
(2009) 10 MP CK 0030
In the Madhya Pradesh High Court

Smt. Geeta Bai

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2009) 10 MP CK 0030

Hon'ble Judges : Sushma Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sushma Shrivastava, J.—Appellant has preferred this appeal challenging her conviction and order of sentence passed by Additional Sessions Judge, Sihora in S.T. No. 717/95, decided on 12.10.2001.

2. Appellant has been convicted u/s 498-A, of IPC and sentenced to rigorous imprisonment for three years with fine of Rs. 3,000/-, in default further imprisonment for six months by the impugned judgment.

3. According to prosecution, deceased Saroj Bai (hereinafter referred to as "deceased") was married to Rajkumar of village Berne, P.S. Manjhgawan; appellant Geeta Bai is the mother-in-law of the deceased. Deceased Saroj Bai and her husband Rajkumar lived separately from the appellant in another room. Appellant Geeta Bai alongwith other co-accused persons used to quarrel with the deceased. On 11.7.95 about 9 "O"clock in the morning, appellant alongwith other co-accused persons quarrelling with the deceased, hurled abuses and instigated her to die by saying "fn vly cki dh gks rks ej tk" and also ran to assault her. Thereafter, deceased Saroj went inside and poured kerosene oil over her body and set her ablaze. Her husband Rajkumar was not at home at the time of incident, when he came back he extinguished the fire. Deceased was rushed to the hospital, but she succumbed to her burn injuries on way to hospital. The intimation of her death was given to Police Station Manjhgawan by Rajkumar, the

husband of the deceased, whereupon mere intimation was recorded and mere inquest report was prepared. After mere inquiry, an offence was registered against the appellant and other co-accused persons. The dead body of the deceased was sent for postmortem examination. The half burnt clothes of the deceased, kerosene oil container and a matchbox were seized from the spot. The spot map was also drawn. After due investigation, appellant Geeta Bai and other five co-accused persons were prosecuted u/s 498-A, 306, 34 of IPC and were put to trial.

4. Appellant and other co-accused persons abjured the guilt and pleaded false implication.

5. Learned Additional Sessions Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted the appellant and the other co-accused persons of the charges u/s 306 of IPC, but found the appellant guilty u/s 498-A of IPC, convicted and sentenced her as aforesaid by the impugned judgment, which has been challenged in this appeal.

6. Learned Counsel for the appellant submitted that after acquitting the appellant of the charge u/s 306 of IPC, learned trial judge gravely erred in convicting the appellant u/s 498-A of IPC without there being any cogent and substantive evidence against her.

7. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellant.

8. Perused the record. Rajkumar (P.W-2), the husband of the deceased and other two witnesses, namely, Badriprasad (P.W-3) and Gayaprasad Dhurve (P.W-4) have not supported the prosecution case; Rajkumar (P.W-2) and Badriprasad (P.W-3) were also declared hostile to prosecution. The conviction of the appellant is based on the oral dying declaration made by the deceased to her father Dhannuram (P.W-7), mother Sheelabai (P.W-5) and one Sone Singh (P.W-6). These witnesses were admittedly not present on the spot at the time of occurrence and reached there on being informed that deceased Saroj Bai had set herself ablaze. According to Dhannuram (P.W-7), when the son of his brother-in-law informed him that Saroj Bai was burnt and there was a quarrel, he reached there alongwith his wife and found his daughter Saroj Bai lying in burnt condition. On being asked Saroj Bai had informed him that her mother-in-law Geeta Bai had abused her and told her "blh le; ej vxj vly cki dh gks", then she poured kerosene oil over her, ignited with matchstick. Dhannuram (P.W-7), the father of the deceased, further deposed that appellant Geeta Bai used to quarrel with his daughter, beat her and made allegations against her character and also fought with her on the day of occurrence.

9. Sheela Bai (P.W-5), the mother of the deceased, also made similar statement that when her sister's son Santosh came to inform that Saroj Bai had set herself ablaze, she had gone to her place alongwith her husband and nephew Santosh and she was told by her daughter Saroj Bai that appellant and other co-accused

persons had abused her, quarrelled with her and said that "vly cki dh gks rks ej tk" and also ran to beat her, then Saroj Bai poured kerosene oil over herself and set herself ablaze. According to Sheela Bai (P.W-5), her daughter Saroj used to tell her that her mother-in-law harassed her and did not permit her to live in the house and made allegations against her character.

10. Sone Singh (P.W-6) also deposed that on being informed by Gaya Prasad that deceased Saroj Bai had set herself ablaze, he reached there and on being asked, Saroj Bai had told him that appellant had quarrelled with her throughout the night and said "vly cki dh gks rks vxk yxk ds ej tk", then she poured kerosene oil over her and set her ablaze. As per the statement of Sone Singh (P.W-6), Saroj Bai also told him that appellant also used to make allegations against her character.

11. The aforesaid witnesses were extensively cross-examined and were also confronted with their respective Police statements regarding the omission of certain facts stated in their evidence. It is also pertinent to point out that even the father and mother of the deceased, namely, Sheela Bai (P.W-5) and Dhannuram (P.W-7), were declared hostile to prosecution and it was during their cross-examination and suggestions given by the prosecution that they deposed certain facts like allegations against character of the deceased and harassment meted out to her by the appellant. In view of these facts, their testimony cannot be said to be above board.

12. Sone Singh (P.W-6) also does not appear to be a reliable witness. He has gone far ahead the parents of the deceased, and said that Saroj had told that appellant Geeta Bai was quarrelling with her throughout the night and told her to set her ablaze and die. This witness went to the extent of saying that deceased used to live with her husband and the appellant in the same house, while the parents of the deceased candidly admitted that deceased was living separately from her mother-in-law. P.W-6 Sone Singh was also contradicted in this behalf with his Police statement (Ex.P-10). This witness is also admittedly a habitual police witness and seems to be interested in deposing against the appellant.

13. Be that as it may, the entire evidence of the mother and father, namely, Dhannuram (P.W-7), Sheela Bai (P.W-5) as well as of Sone Singh (P.W-6) consists of the so called oral dying declaration made by the deceased to the aforesaid witnesses.

14. The Apex Court in the case of Gananath Pattnaik Vs. State of Orissa, has held that such evidence, although admissible in respect of the offence u/s 304-B by virtue of the Section 32 of the Evidence Act as it related to the cause of death, is not admissible for the offence punishable u/s 498-A of IPC and has to be termed as being only hearsay evidence. It would be profitable to refer to the following observation made by their Lordships in the case of Gananath Pattnaik (supra) with reference to the statement made by the deceased to her relatives:

Such a statement appears to have been taken on record with the aid of Section

32 of the Indian Evidence Act at a time when the appellant was being tried for the offence u/s 304-B and such statement was admissible under Clause (1) of the said Section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable u/s 498-A of the Indian Penal Code and has to be termed as being only a hearsay evidence. Section 32 is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exception of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused.

15. In view of the legal position enunciated above, the evidence of the three witnesses, namely, Dhannuram (P.W-7), Sheela Bai (P.W-5) & Sone Singh (P.W-6) regarding the so-called oral dying declaration made to them by the deceased against the appellant regarding her making allegations against character of the deceased, abusing and quarrelling with her, were not admissible in evidence for the purpose of offence u/s 498-A of IPC and thus could not form the legal or substantive evidence against the appellant for the said offence. It is pertinent to mention that there has been no State appeal against the acquittal of the appellant u/s 306 of IPC.

16. Apposite to add that there is no such direct evidence against the appellant that any of the aforesaid witnesses actually witnessed any incident of appellant beating, querrelling, hurling abuses to the deceased and they did not cite any concrete instance when appellant made any allegations against the character of deceased before any of them. The generalized statement made by Dhannuram (P.W-7) that appellant used to quarrel and beat the deceased and make allegations against her character was also obtained on the suggestions at the instance of the public prosecutor and that too did not indicate that any such incident actually happened before him or he witnessed any such incident occurring between the deceased and the appellant.

17. In the wake of aforesaid, there being no legal evidence on record against the appellant for commission of offence u/s 498-A of IPC, her conviction u/s 498-A of IPC cannot be sustained and deserves to be set aside.

18. Appeal is, therefore, allowed. The conviction of appellant and sentence passed on her u/s 498-A of IPC are set aside and she is acquitted of the charge.

19. Appellant is on bail. Her bail bonds shall stand discharged.