
(2017) 01 MP CK 0157
In the Madhya Pradesh High Court
Case No : 15804 of 2016

Smt. Hemkunwar and another	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 372](#), [Section 378\(3\)](#) - Examination of witnesses by police - No appeal to lie unless otherwise provided - Appeal in ca

Citation : (2017) 01 MP CK 0157

Hon'ble Judges : S K Gangele, Subodh Abhyankar

Bench : Single Bench

Advocate : S S Bisen

Final Decision : Dismissed

Judgement

1. The present application under Section 378(3) read with Section 372 of the Code of Criminal Procedure has been filed against the judgment dated 26.8.2015 passed in Sessions Trial No.637/2013 by the VII Additional Sessions Judge, Sagar whereby the respondents No.1 to 6 have been acquitted from the offences punishable under Sections 304B, 498A of IPC read with Section 3(1), 4-A of the Dowry Prohibition Act, 1961.
2. Heard learned counsel Shri S.S. Bisen for the applicant/complainant - Vinod Kumar Sen on the question of admission.
3. In brief the case of the prosecution is that Nutan w/o Anil @ Vikki, who was married on 14.4.2012 died under suspicious circumstances on 9.8.2013 at around 10.10 a.m. at her matrimonial home at Sagar. It was alleged that the deceased Nutan was being harassed by her husband Anil @ Vikki and other family members and soon after her marriage on 14.4.2012, within one year she died on 9.8.2013. In the postmortem report submitted by Dr. A.K. Jain, Medical Officer, District Hospital, Sagar (PW-9), it is mentioned that the death was due to

hanging and it is also mentioned that the deceased was carrying pregnancy of around 16-18 weeks at the time of her death.

4. Learned counsel for the applicant has submitted that although the learned Judge of the Trial Court has rightly convicted the husband of the deceased Anil @ Nikki under Section 304B and 498A of IPC and Section 3(1) and 4-A of the Dowry Prohibition Act, but, has grossly erred in acquitting the other accused persons, who are the close relatives of husband, namely, Smt Shanti Devi (mother of husband Anil @ Vikki), Mamta (sister of husband Anil @ Vikki), Dr. Harishchand (brother-in-law of husband Anil @ Vikki), Sharad Kumar (elder brother of husband Anil @ Vikki), Manju w/o Om Prakash (sister of husband Anil @ Vikki) and Smt. Nisha w/o of Prashant Shrivastava (sister of husband Anil @ Vikki).

5. The learned counsel for the applicant has drawn our attention to the testimony of Vinod Kumar Sen (PW-1) - father of the deceased Nutan, who has stated that his daughter Nutan was harassed by all the family members including Anil @ Vikki. He has also alleged that he spoke to Dr. Harishchand (brother-in-law of Anil) in this behalf. Dr. Harishchand also abused him and threatened him of dire consequences. It is pertinent to mention here that this witness not only made omnibus allegations against all the family members but also against Dr. Harishchand, who happens to be the husband of the sister-in-law of the deceased and is a resident of Jhansi whereas the incident took place at Sagar. It is also stated by Vinod Kumar Sen (PW-1) that there was telephonic conversation in this behalf also whereby Dr. Harishchand had abused him but neither the telephonic conversations nor their details are on record. Thus except bald statements, there is nothing on record to connect the respondent Dr. Harishchand with the offence. Apart from that, this witness has admitted in his cross-examination that he had informed the police regarding the role of Dr. Harishchand but if the same is not mentioned in his statement recorded under Section 161 Cr.P.C., then he cannot assign any reason for the same. Thus there is a clear omission on the part of this witness. Similarly, Nisha Sen (PW-2), who is the younger sister of deceased Nutan has alleged the demand of dowry by Anil @ Vikki, the husband of the deceased and has made omnibus allegations against the other accused persons (the respondents herein). She has also deviated from her 161 Cr.P.C. statement and has made improvisation in Court regarding the present respondents. Shobhna Sen (PW-3) is also the younger sister of deceased Nutan and she has reiterated the allegations as alleged by the father and other sister Nisha Sen but no specific role has been assigned by her against each of the accused persons and only omnibus allegations have been made. Chandrakanta wife of Vinod Kumar Sen has been examined as PW-4 as deceased Nutan was her daughter. She has alleged demand of dowry soon after one week after the marriage took place and has also made the same allegations as are made by the other prosecution witnesses.

6. The learned Judge of the Trial Court after appreciating the evidence on record has convicted Anil @ Vikki, who is the husband of the deceased whereas all the

accused persons (respondents herein) have been acquitted. The acquittal is based on the scrutiny of evidence available on record. The learned Judge of the Trial Court in para 60 of the judgment has rightly held that the demand of dowry is not proved so far as the present respondents are concerned and the learned Judge has also rightly held that the accused Mamta and Dr. Harishchand, who are sister and brother-in-law of the husband respectively are residing separately at Jhansi whereas accused Nisha and Manju, who are the sisters-in-law of the deceased, accused Raja @ Sharad (Jeth of deceased) and accused Shanti Devi (mother-in-law of the deceased) cannot be said to be involved in the demand of dowry and it is also rightly held by the learned Judge that it is not proved that only because of demand of Rs.5.00 lacs as dowry the deceased has committed suicide. Apart from that, the record also reveals that the non-applicant No.5 Manju (sister-in-law of the deceased) is a resident of Lucknow, who got married around 20 years ago. Similarly, non-applicant No.6 Nisha (sister-in-law of the deceased) is also married and living separately with her husband at Bangalore. It is pertinent to note that there is a suicide note proved as Article Q1/Ex.P/13 and also the register of the deceased written in her own handwriting seized by the police from the room of the deceased, which are exhibited as Ex.P/13 & Ex.P/15 and proved by Gautam Solanki (PW-13), C.S.P. the investigating Officer, who has seized the aforesaid suicide note vide seizure memo Ex.P/11 and as per para 26 of the judgment, the handwriting expert's report the same is not negative.

7. The learned Judge of the Trial Court has rightly relied upon the decision of the Apex Court in the case of Sharad Birdhichand Sarda vs State of Maharashtra, reported in AIR 1984 SC 1622 wherein the Hon'ble Apex Court has held that in the case of death of a woman in her matrimonial home, it is a common feature that the incident is exaggerated by the relatives of the deceased and it is a common practice to implicate all the members of the family of the husband.

8. In the circumstances of the case, the application filed by the complainant under Section 378(3) of the Cr.P.C. is devoid of any merits and is hereby dismissed in limine.