
(2016) 09 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 4075 of 2013

State of H.P.

APPELLANT

Vs

Vijay Singh

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

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

Citation : (2016) LatestHLJ(HP) 1197

Hon'ble Judges : Mr. Rajiv Sharma and Mr. Vivek Singh Thakur, JJ.

Bench : Division Bench

Advocate : Mr. Neeraj K. Sharma, Deputy Advocate General, for the Appellant;
Mr. Rajesh Mandhotra and Ms. Kanta Thakur, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J. - Respondent has been acquitted vide judgment dated 1.05.2013 passed by learned Additional Sessions Judge, in Sessions Case No. 61-1/2010 in Case FIR No. 18/2010 registered under Section 498-A and 306 IPC in Police Station Indora District Kangra H.P. Acquittal of respondent has been assailed by State of H.P. in present appeal.

2. On receiving telephonic information in Police Station Indora from Medical Officer, CHC Indora, PW-11 SI Karam Chand had rushed to CHC Indora after recording the same information in Daily Station Diary vide GD entry No. 31(A) (Ex. PW-5/A), in Police Station Indora.

3. In CHC Indora, PW-1 Kamlesh Kumari mother of deceased made statement (Ex. PW-1/A) under Section 154 Cr.P.C., stating therein that her daughter had married to respondent in the year 2009 and after few months of marriage when her daughter was going with respondent somewhere on motorcycle, respondent had pushed her daughter from motorcycle causing injuries to her daughter and in this matter a case was registered in Police Station Indora. She further stated that respondent had been torturing her daughter without any reason and her

daughter had consumed poison due to maltreatment by her husband (respondent). The said statement was sent to Police Station through HHC Chand Lal, upon which FIR PW-7/A was registered by PW-7 ASI Nardev Singh. After endorsement Ex. PW-7/B on the said statement (Ex. PW-11/A) the case file was sent to spot through HHC Chand Lal.

4. An application Ex. PW-4/A was moved by Investigating Officer to Medical Officer for medical examination of deceased and also for recording statement of deceased. However, statement of deceased could not be recorded as deceased was not found fit to make statement. Later on, deceased was referred to Ravi Hospital Pathankot, where she expired on the same day. Postmortem of deceased (Ex. PW-12/B) was conducted by PW-10, Doctor Subhash Thakur and as per his opinion deceased had died because of celphos (alluminium phosphide) poison. After completion of investigation, challan was presented in Court against respondent and he was charge sheeted under Section 498-A and 306 IPC and was acquitted on conclusion of trial.

5. Entire prosecution case hinges upon testimonies of mother PW-1, father PW-2 and brother PW-3 of deceased. All of them deposed that respondent used to torture, beat and abuse deceased and was doubting her character. Once respondent had pushed deceased from running motorcycle resulting into injuries to deceased whereupon a case under Section 498-A IPC was registered vide FIR No. 290 dated 4.11.2009 in Police Station Indora. As per depositions of prosecution witnesses, after that incident deceased was living with her parents and on 7th January, 2010 parents of deceased had called respondent and his parents to Indora for compromise. Respondent and deceased along with their parents were present in Indora for re-conciliation and respondent used abusive language raising doubt about character of deceased and also stated that he did not want to keep deceased with him where upon deceased went to tap to drink water but had consumed poisonous substance there. She was immediately taken to CHC Indora and thereafter Ravi Hospital Pathankot where she expired in the evening.

6. PW-1 Kamlesh Kumari, PW-2 Lal Singh and PW-3 Dalip Kumar admitted that deceased was living with them since about two months prior to 7th January, 2010. FIR Ex. PW-7/A with regard to incident of pushing deceased from motorcycle was lodged on 4th November, 2009. Meaning thereby that deceased was living with her parents since lodging of said FIR under Section 498-A IPC. Therefore after 4.11.2009 there was no occasions for fresh occurrence of harassing or maltreating deceased by respondent subjecting her to cruelty to attract provisions Section 498? A. Case in FIR No. 290 of 2009 (Ex. PW-7/A) registered in Police Station, Indora was to be decided on its own merit.

7. For attracting provisions of 306 IPC prosecution had to establish that act of respondent was so directed, correlated and proximate with the act of suicide that it could be safely inferred that deceased had committed suicide only on account such act committed on the part of respondent. Mere abuse or indecent behaviour

of respondent towards deceased could not be considered that respondent had committed offence under Section 306 IPC.

8. Parents and brother of deceased stated that deceased was residing with them since last two months before committing suicide and they had decided to compromise the matter and had asked deceased to compromise with family of respondent and therefore, they had called family of respondent to Indora. PW-1 Kamlesh Kumari had admitted that she had been asking deceased for compromise but had denied that she had been forcing deceased for compromise. PW-2 Lal Singh had also admitted that during stay of deceased with him he had asked her for 5-7 times to compromise the matter. However, PW-3 had denied that he had been asking his sister for compromise.

9. PW-1 stated that they had reached Indora Tehsil at 1.00 PM and at that time parents of respondent were present there. However, in later part of cross examination she stated that parents of respondent had come to their house wherefrom they had gone together to Indora in one vehicle brought by parents of respondent. She had admitted that deceased had consumed poison within 10 minutes after their arrival at Indora. PW-3 had also admitted the said fact in his cross examination.

10. In cross examination PW-2 had denied to have checked bag of his daughter, finding celphos tablets in that bag and taking into possession of those tablets whereas it was so mentioned in his statement recorded by police under Section 161 Cr.P.C.

11. PW-4 Doctor Satish Pal had conducted medical examination of the deceased in CHC Indora. In his cross examination he had admitted that relatives of patient had shown and handed over him poisonous substance which was celphos. All these facts indicated that deceased had already having celphos with her with predetermined mind to commit suicide. She was living with her parents since last two months and was not inclined to commit suicide but to fight but on the date when both families had decided to sit together for re-conciliation, she was carrying celphos with her and within 10 minutes of meeting of families she had consumed poison.

12. Question of asking deceased to compromise for 5-7 times had arisen only of parents of deceased were insisting for compromise whereas deceased was not agreeing to reconcile. Forcing deceased to compromise with respondent and his family could also be reason for committing suicide.

13. In these circumstances, it cannot be said with certainty that it was behaviour of respondent or pressure of parents to reconcile the matter with respondent which forced deceased to consume poison.

14. From testimonies of prosecution witnesses there were two possible reasons for committing suicide by deceased. Having such evidence on record it cannot be said that it was only respondent who was responsible for committing suicide by

deceased. It is well settled law when two views were possible, the view favourable to the accused was to be preferred. Possibility of another reason for committing suicide by deceased is fatal for prosecution case. Therefore, it cannot be said that prosecution has been able to prove guilt of respondent beyond all reasonable doubts.

15. Respondent has been acquitted by trial Court. From perusal and scrutiny of evidence, it cannot be said that trial court has not appreciated evidence correctly and completely and acquittal of accused has resulted into travesty of justice or has caused miscarriage of justice.

16. After considering arguments of respective counsel for the parties and minutely examining the testimonies of the witnesses and other documentary evidence placed on record, we are of the considered view that no case for interference is made out.

17. The present appeal, devoid of any merit, is dismissed, as also pending applications, if any. Bail bonds, if any, furnished by the accused are discharged. Records of the Court below be immediately sent back.