

(1994) 06 MP CK 0002

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 365 of 1986

State of Madhya Pradesh

APPELLANT

Vs

Hakam Singh

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 161(1)
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1995) CriLJ 2982 : (1994) ILR (MP) 213 : (1995) JLJ 384

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : M.L. Choubey, for the Appellant; Arvind Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.—The present appeal is directed against the persons who have been acquitted i.e. Hakam Singh, Komal Singh and Majhli Bahu alias Bai. One Kamlabai. the wife of respondent-accused No. 1 Hakam, Singh, committed suicide by pouring kerosene oil on herself. All the respondents were prosecuted under Sections 306 and 498 A. IPC.

2. The learned Addl. Sessions Judge in Sessions Trial No. 10/85 after considering the evidence on the record by him judgment and order dated 16-9-1985 acquitted all the accused persons.

3. Heard the learned Government Advocate and learned counsel for the respondent-accused, Learned Govt. Advocate submitted that the Sessions Court has erred in law in acquitting the accused-respondents as there was material on the record warranting their conviction. He read over the statements of the prosecution witnesses and after going through the evidence, it was accepted by the learned Govt. Advocate that no charge u/s 306, IPC on the basis of the evidence is made out. So far as the acquittal u/s 306, IPC is concerned, it is not disputed, but he vehemently criticised the acquittal with regard to the liability of

the respondent u/s 498A, IPC as cruelty was meted to the lady, who had committed suicide. In this regard he placed before the Court the evidence on record, more particularly the relevant extract of the statement of the father of the girl Prahlad Singh (P.W. 1) and the statement of the mother of girl Bhagwati (P.W. 2). So far as the statement of father is concerned, it has come in the evidence that the lady, who has committed suicide, never stated or wrote anything to his father. It is not unnatural phenomena that the girls do not tell everything to their father but they tell the things to their mother. Learned Government Advocate stated that in the statement of the father there is nothing but cruelty is made out. So, far as this submission is concerned, as stated above, in the society the girls generally do not say everything to their fathers but they say the thing to their mothers. So, on the question, the evidence of the mother is relevant and that has to be scrutinised. Bhagwati (P.W. 2) in her statement has stated that a dowry was settled and she has mentioned about the dowry. She has stated for giving the watch, radio, cycle and Rs. 6,000/-. However, according to her some delay took place. At the time of marriage Rs. 4,000/- were given and Rs. 2,000/- were to be given. She has stated that except watch nothing was given. At the time of second marriage (Gona) the girl came to her parents house and she told them that for not giving the dowry items her-in-laws are not treating her properly. She has stated that she and her husband had told her (Kamla Bai) that they will give everything. Thereafter the girl went to her in-laws house. Komal Singh, who is the elder brother of the husband, came to the house of the girl and asked for dowry whereupon the parents of the girl assured him that they will give the remaining dowry in the month of "Baisakh", whereat Komal Singh told them that if the remaining dowry is not given then it would not be a good thing. Komal Singh stated that if the dowry does not come then the girl will be burnt by pouring Kerosene oil. In the cross-examination the mother Bhagwati (P.W. 2) has stated that she did not disclose anything about the demand of the dowry to any, of his relations as she did not want to make it a controvertial issue.

4. Learned counsel for the respondent-accused submitted that there is discrepancy in the statement u/s 161, Cr. P.C. and the evidence of Bhagwati (P.W. 2). Learned counsel further stated that the aforesaid facts were not stated in the statement u/s 161, Cr. P.C. therefore the statement of Bhagwati (P.W. 2) is not worth credence.

5. The statement u/s 161, Cr. P.C. is not a, substantial piece of evidence supporting the prosecution in-chief-examination. The submission as advanced above is that the statement u/s 161, Cr. P.C. does not contain statement of Bhagwati (P.W. 2) what she has stated before the Court. In Section 161, Cr. P.C. statement it is not necessary that everything should come, as the statement u/s 161, Cr. P.C. is not the statement which has to be used for any purpose except to contradict the person in the manner provided u/s 161(1), but from the record it has come to the notice that the Investigating Officer has not stated in his statement that he went to Bhagwati (P.W. 2) and recorded her statement.

Learned counsel for the respondents is correct in submitting that now a tendency is developed that the statements of the complainant's witnesses are recorded u/s 161, Cr. P.C. without their knowledge and without going to them and is only a formality which is completed at the Police Station itself. This tendency on the part of the investigating agency is very dangerous, so far as the criminal justice is concerned and it needs to be taken note of. The statement u/s 161, Cr. P.C. cannot be said to be a reliable statement of the person unless in fact it is recorded and this fact is established by the Investigating Officer in his examination-in-chief before the Court. In the present case, the Investigating Officer has not stated that he in fact recorded the statement of the lady in her presence. Copying out of the FIR in the absence of the person treating it as statement u/s 161, Cr. P.C. has to be discouraged and the concerned authorities are expected to take care of it.

6. So far as the statement of Bhagwati (P.W. 2) is concerned, she has not stated anything against the respondent No. 1 and respondent No. 3. She has stated only against the respondent No. 2, the elder brother of the husband. Learned counsel for the respondents has relied on a decision of the Supreme Court reported in *Tota Singh and Another Vs. State of Punjab*, In para 6, the Supreme Court has said as under (at p. 976):-

"6. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

The Supreme Court has clearly said that the Jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse.

7. In the present case, from the evidence it is not established that the approach

made by the lower Court to the consideration of the evidence is vitiated by some manifest illegality or the conclusion recorded by the Court below is perverse. The evidence on, the record is not such whereon any such view can be taken by this Court. This Court is not expected to reappreciate the evidence as it is settled principle of law that if the evidence could be reappreciated two Views are possible, then Court is always slow to "interfere on the ground of possibility of different Views..

8. Accordingly, I find no merit in the appeal. The appeal is dismissed. The respondents-accused are on bail. Their bail-bonds are cancelled and the sureties are discharged.