
(2012) 09 MP CK 0305

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 825 of 2002

State of Madhya Pradesh

APPELLANT

Vs

Manohar, Hindu Singh, Gitabai and Vidhyabai

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 326, 34, 498A

Citation : (2012) 09 MP CK 0305

Hon'ble Judges : P.K. Jaiswal, J;M.C. Garg, J

Bench : Division Bench

Advocate : R.S. Bais, Dy Govt. for the State, for the Appellant; Ashok Shukla with Shri R.K. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.—This appeal has been filed by the State against the judgment & order of acquittal of the respondents for an offence punishable under Sections 498A/34 and 307/34 of IPC, passed by the 4th Additional Sessions Judge, Indore in Sessions Trial No. 485/2000 with permission to grant leave. On 25.11.2002 the Division Bench of this Court granted leave and admitted the appeal only against accused-respondents No. 1 to 4, namely Manohar, Hindu Singh, Gitabai and Vidhyabai, while the leave against the respondents No. 5 and 6 has been refused. Brief facts of the case are that marriage of Nitubai (PW3) was solemnized with respondent No. 1 Manohar, somewhere in 1995. The allegation against the respondents is that, after sometime of the marriage, they started ill treatment and cruelty with her and also demanded a sum of Rs. 25,000/- from her and due to non-fulfillment of the said demand on 6.10.1997 they fraudulently gave acid to the victim on the pretext of syrup. The victim (PW3) relying on her husband and other relatives consumed the said acid on the pretext of syrup. After consuming the same she complained about pain on her stomach and neck. She was immediately admitted at Arpan Nursing Home Indore, where she was treated till 20.10.1997 by Dr. Ashok Jain and, thereafter, she was

discharged. Ex. P/1 is her discharge card. She was treated for sulphuric acid poisoning. The allegation against the said Hospital is that without completion of her treatment she was forcibly discharged by the treating doctor (Dr. Ashok Jain). Thereafter, she was admitted at Amol Hospital situated at Yashwant Niwas Road, Indorem, where she was treated by Dr. Sunil Jain (PW8) from 29.10.97 to 4.11.1997. She was again admitted at M.Y. Hospital, Indore by her husband Manohar (accused-respondent No. 1). At the time of admission she narrated that some two months back she consumed acid and, therefore, she was facing problem in taking meals and water. After treatment she was operated and discharged from M.Y. Hospital on 29.12.1997. Ex. P/5 is her admission card and Ex. P/6 is her out-door patient ticket. One day prior to lodging a complaint she narrated the fact of demand of Rs. 25,000/- by her husband so that he could get government service, to her father Ghanshyam (PW2).

2. The FIR (Ex. P/9) was lodged by her father on 6.12.1997, on the basis of which Crime No. 456/97 for an offence u/s 498-A of IPC and Section 4 of the Prohibition of Dowry Act, 1961 was registered against all the six accused persons. After investigation, looking to the various medical reports the respondents were prosecuted u/s 307/34 and in alternative under Sections 326/34 and 498A of the IPC and Section 4 of the Prohibition of Dowry Act, 1961. The charge sheet was filed before the Judicial Magistrate First Class, Indore, who committed the matter to the Court of Sessions Judge, Indore on 19.6.2000, who in turn made over the case for trial to the Court of First Additional Sessions Judge, Indore. The learned trial Court framed charge under Sections 498A/34 and 307/34 of IPC against all the six accused persons. They abjured the guilt and pleaded not guilty and stated that they have been falsely implicated and prayed for their acquittal.

3. During trial, in support of its case the prosecution has examined total 10 witnesses. They are PW1 Dr. Ashok Jain, PW2 Ghanshyam (father of the victim), PW3 Nitubai (victim), PW4 Basantibai (mother of the victim), PW5 Gangabai, PW6 Sorambai, PW7 Dr. Jitendra Tiwari of M.Y. Hospital, Indore, PW8 Dr. Sunil Jain of Arpan Nursing Home, Indore, PW9 K.C. Purohit, SHO Police Station Sanwer, district Indore and PW10 S.S. Yadav, Assistant Sub Inspector, Investigating Officer of the case. The respondents have not produce any witness in their defence. The learned trial Court, after appreciating the evidence on record, found that the prosecution had failed to prove the persistent ill treatment, cruelty and demand of Rs. 25,000/- by the accused persons and acquitted all of them.

4. Learned Deputy Government Advocate has submitted that victim Nitubai (PW3), her father Ghanshyam (PW2) and mother Basantibai (PW4) in their statements very categorically stated that there was persistent demand of dowry of Rs. 25,000/- and ill treatment and cruelty with the victim Nitubai, the trial Court committed an error in acquitting the accused-respondents. In support of his contention he drew our attention to the evidence on record and the

reasonings assigned by the trial Court and prayed that this appeal be allowed and the respondents 1 to 4 be convicted u/s 498A of the IPC.

5. On the other hand, Shri Ashok Shukla, senior counsel for the respondents 1 to 4 has contended that there was no material to show that any demand dowry was made by them. It is also submitted that cruelty to victim (PW3) was not proved and the learned trial Court has rightly held that there was no material on record and the reasonings assigned by the trial Court is based on the admissions made by the prosecution witnesses. The reasons assigned by the trial Court are based on appreciation of evidence of the prosecution witnesses. No case for interference with the impugned judgment and order of acquittal is made out. He also submitted that on presumption the order of the trial Court cannot be set aside and prayed for dismissal of the appeal.

6. If we see the statement of father of the victim Nitubai, who has been examined before the trial Court as PW2, he in paragraph 30 of his examination-in-chief has deposed that when he met his daughter on 6.10.1997 at Hospital, she had narrated that her in-laws were demanding Rs. 25,000/- in cash and one gas cylinder from her and due to non fulfillment of the said demand she was subjected to cruelty and on those basis sister-in-law of Nitubai gave acid in the glass and asked her to close her eyes and take it. She on the pretext that it must be medicine consumed the same. This witness has admitted that at that time except his wife no other family member was present. There are material contradictions in paragraph 32 to 37 of his statement. The report lodged by PW2 is Ex. P/4. Ex. D/ 5 is his police statement, in which he has deposed that after six months of the marriage of her daughter Nitubai when she came to her parental home, then she narrated regarding cruelty against her mother-in-law, father-in-law, sister-in-law, two brother-in-law and husband and demand of Rs. 25,000/- and due to non fulfillment of the said demand she was ill treated by them. This fact has not been stated in report Ex. P/4 nor in his police statement Ex. D/5 and this witness has not stated any reason as to why he has not stated in his report or police statement. There is also omission in police report Ex. P/4 that acid was given by her sister-in-law and her husband. He does not know all those facts and, therefore, could not mention in the report. These facts have been considered by the trial Court in paragraphs 51 & 52 of the impugned judgment.

7. Similarly, victim Nitubai (PW3), wife of the respondent No. 1 in paragraph 17 of her examination-in-chief very categorically stated that in her police statement Ex. D/6 she has not stated about cruelty and ill treatment nor she stated that a sum of Rs. 25,000/- was demanded by the respondents. There are material omissions in her police statement Ex. D/6. She further admitted that regarding demand of Rs. 25,000/- and ill treatment she stated only to her father (PW2) and except her father she never stated to anyone. There are material omissions and contradictions in her court statement. The learned trial Court discussed the same in paragraph 53 of the impugned judgment.

8. As per statement of Dr. Ashok Jain (PW1), who has treated the victim (PW3)

at his Arpan Nursing Home from 6.10.1997 to 20.10.1997, has deposed that she was admitted in her hospital in Ward No. 114. Ex. P/1 is the discharge card and Ex. P/2 is history sheet of PW3, wherein the history of the patient reads as under:-

Ingestion 40 ml sulphuric acid on 6.10.97 at around 8 pm. Sever Burning E/n, chest, Black col. vomiting.

9. The Dharampuri police was informed about the condition of PW3 on 7.10.1997. As per Ex. P/2 it was a case of accidental ingestion. Ex. P/3 is the report about the incident and treatment of the patient (PW3) in which he gave all the details and line of treatment of PW3 to Sanwer police station. First time the complaint was lodged by PW2 Ghanshyam, father of the victim on 17.11.1997. PW1 in paragraph 9 of his cross examination has deposed that when he asked about the incident dated 6.10.1997 from his patient (PW3) she stated that by mistake she consumed acid as syrup. No report was lodged immediately after the incident nor prosecution witnesses in their statements stated that victim narrated them about the demand of dowry from her. As per statement of treating doctors PW7 and PW8 when she was admitted at Amol Hospital and M.Y. Hospital after dis scope and dilatation her condition was normal.

10. It is also submitted by the learned senior counsel for the respondents that as per custom prevailing in their society Panchayat was held and in the Panchayat divorce was held between PW3 and respondent No. 1 and after divorce her Natra was performed and thereafter she started residing with her second husband. Section 498A-A of IPC does not specifically speaks of dowry demand, but only unlawful demand for property of valuable articles. In the instant case there is no evidence on record on this aspect or any such demand. Even in the complaint, on which the prosecution heavily rely, there is no reference to any demand of dowry. The injured herself in her cross examination very categorically stated that prior to the incident dated 6.10.1997 she stayed with her husband and his family members from the date of her marriage and she never made any complaint against them nor she stated to her parents that they were demanding dowry from her or due to non fulfillment of the said demand she was subjected to cruelty or ill treatment.

11. If we consider the evidence of the prosecution then the case of the prosecution was that a sum of Rs. 25,000/- was demanded by her husband to secure government job. The learned trial Court by a well reasoned order has held that there was no material to show that demand for any dowry was made from the victim or her parents. The complaint was lodged after a period of about two months from the date of incident and prior to the lodging of complaint there was not even a whisper of a conduct of the respondents of harassment of the complainant at their ends with a view to coercing her to meet any unlawful demand by them. The allegation of behaviour on the part of the respondents 1 to 4 and demand of Rs. 25,000/- and a gas cylinder was made by them made from the victim subsequently and she narrated the fact of demand of Rs. 25,000/-

only to her father and not to her mother or other relatives, which was nothing but an after thought and the learned trial Court rightly held that the same was not bona fide. The evidence of prosecution witnesses not inspire confidence. Further, in respondents' examination u/s 313 of Cr. P.C. no incriminating material put to them. In such circumstances, the impugned judgment acquitting the respondents-accused calls for no interference. In the circumstances, we are of the view that no case for interference with the judgment of acquittal passed by the learned trial Court is made out. The appeal filed by the appellant-State has no merit and is, accordingly, dismissed.