
(2012) 01 MP CK 0112

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 460 of 1997

State of Madhya Pradesh

APPELLANT

Vs

Shrideen Chhatri Prasad Suryawanshi

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 108, 306, 498A

Citation : (2012) CriLJ 2106

Hon'ble Judges : Vimla Jain, J

Bench : Single Bench

Advocate : Savita Choudhary, for the Appellant; S.K. Dixit, for the Respondent

Final Decision : Allowed

Judgement

Smt. Vimla Jain, J.—This appeal has been preferred against the judgment dated 27-7-1994 passed by the 1st Additional Sessions Judge, Chhindwara in ST No. 42/90, whereby the respondent has been acquitted from the charge punishable under Sections 306 & 498A of the Indian Penal Code. The facts and the events leading to the present appeal are the respondent was married with deceased Mamta, the daughter of complainant Durga Prasad (PW-1) and Nanhibai (PW-4), three years before the incident. According to the complainant, the respondent had made an allegation that the deceased Mamta had illicit relationship with his elder brother Kamdeen. He also threatened to perform the second marriage. He used to consume liquor and torture her mentally. On 30-6-1989 in the night, deceased Mamta committed suicide by consuming poisons substance in her matrimonial house. On 1-7-1989, complainant Durga Prasad received an information that Mamta had died. He came to village Mowadehi. Police Station Chhindwara and saw her dead body. He went to Police Station Chhindwara and lodged merged report (Ex. P/1).

2. Police conducted inquest proceeding and prepared Naksha Panchnama (Ex. P/2). The dead body of Mamta was sent to hospital for post-mortem examination and on the same day Dr. U.C. Jain (PW-11) and Dr. S.S. Nadkar performed the

post-mortem on the dead body of victim. Dr. U.C. Jain (PW-11) has opined that the dead body was in the state of decomposition therefore they were unable to give any definite opinion about the cause of death. They preserved the viscera for examination in the Forensic Science Laboratory. The post-mortem report of the deceased (Ex. P/9) was also placed on record.

3. After investigation, charge-sheet was filed against the respondent. The learned Additional Sessions Judge framed the charges against the respondent under Sections 306 and 498A of the IPC on 3-9-1990. The respondent pleaded not guilty to the charge and pleaded innocence.

4. To substantiate the charges levelled against the respondent, the prosecution examined 16 witnesses as mentioned below :--

PW-1- Durga Prasad - Complainant: father of deceased Mamta.

PW-2 - Bhaurao, Panch to inquest Panchnama Ex. P/3 and panch to seizure Panchnama Ex. P/6.

PW-3 - Nandkishore - Cousin of deceased Mamta.

PW-4 - Nanhibai - Mother of deceased.

PW-5. - Vinod - Brother of deceased.

PW-6. - Mahatram - Kotwar of village Mowadehi.

PW-7. - Mallu - Servant of respondent.

PW-8. - Mahtu alias Linge - Servant of respondent.

PW-9. - Basantrao - Servant of respondent.

PW-10. - Mohan - Constable of police station.

PW-11. - Dr. U.C. Jain - Chhindwara, who conducted post-mortem on dead body of victim Mamta and proved post-mortem notes at Ex. P/9.

PW-12. -There is no witness of this number.

PW-13. - Kamdeen - Brother of respondent.

PW-14. - Ramkrishan Suryawanshi -Cousin of deceased and panch to inquest Panchnama (Ex. P/3).

PW-15. - Sukhdas - Independent witness

PW-16. - Brijkishore - Nephew of respondent.

PW-17. - M.L. Sharma. ASI, Police Station Chhindwara.

5. The respondent did not examine any witness in his defence.

6. After appreciating the evidence, the trial Court did not find the respondent guilty under Sections 306 and 498A of the IPC and acquitted him from both the

charges levelled against him. Being aggrieved by the impugned judgment of acquittal, the instant appeal has been preferred by the State of Madhya Pradesh, after taking leave from this Court on the grounds mentioned in the memo of appeal.

7. Ms. Savita Choudhary, learned Panel Lawyer appearing on behalf of the State submitted that the trial Court did not appreciate the evidence in proper perspective. The finding of acquittal is erroneous and deserves to be set aside. She prayed that the respondent should be punished.

8. On the other hand, learned counsel for the respondent/accused supported the impugned judgment of acquittal and submitted that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The trial Court has rightly acquitted him from the aforesaid charge, hence no interference is called for.

9. The question for consideration in this appeal is that whether the trial Court was justified in acquitting the respondent from the charges under Sections 306 and 498A of the IPC?

10. It had not been disputed that the death of deceased Mamta occurred otherwise than under normal circumstances. Durga Prasad (PW-1) deposed that on getting information that his daughter Mamta had died at village Mowadehi, he went there and saw her dead body. He saw blueish tint on her face. Since he felt that her death was not natural, he went to police station and lodged the report. CSP, R.S. Tiwari, went on the spot, drew inquest memorandum (Ex. P/13) and sent the dead body of deceased to post-mortem examination. Dr. U.C. Jain (PW-11) deposed that on 2-7-1989, he along with Dr. S.S. Nadkari conducted the post-mortem examination of the body of deceased and found the following:--

Dead body of young female, foul smell present, rigor mortis passed off, post-mortem staining present in back, face swollen, eyes closed, pupils dilated, mouth half open, tongue protruded out, nails and lips cyanosed, reddish frothy fluid coming out from nostrils and mouth, abdomen distended, greenish discoloration present on face and abdomen, blisters present on face, both upper limbs and ants aspect of trunk, cuticle peeled off at several places over the dead body. Dead body was in the state of decomposition.

Throughout the post-mortem examination. Dr. S.S. Nadkar was with me. In our opinion as the dead body was in the state of decomposition, we were unable to give any definite opinion about the cause of death. For this purpose we have preserved the above viscera. Post-mortem was performed after about 48 hours of death. My report is Ex. IV 9 and A to A are my signatures and B to B are of Dr. S.S. Nadkar's signatures.

11. It is clear from the aforesaid evidence that death of deceased Mamta was caused as a result of poisoning at her matrimonial home.

12. The next crucial question emerges for consideration is whether the

respondent abetted the commission of suicide by the deceased?

13. The abetment and abettor are defined in Sections 107 & 108 of the Indian Penal Code, which read as under :--

Section 107. Abetment of a thing -- A person abets the doing of a thing, who--

First.-- Instigates any person to do that thing; or

Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation I -- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation II -- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

Section 108. Abettor -- A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1 -- The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2 -- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that effect requisite to constitute the offences should be caused.

14. The Apex Court in the case of Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), reiterated the legal position laid down in its earlier three Judges Bench judgment in the case of Ramesh Kumar Vs. State of Chhattisgarh, and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. Their Lordships in the aforesaid case of Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), , summed up the legal position as under :--

In order to prove that the accused abetted commission of suicide by a person, it has to be established that :--

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission

or conduct to make the deceased move forward more quickly in a forward direction : and

(ii) that the accused had the intention to provoke urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

15. The Apex Court in the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, after considering the dictum laid down in its various earlier decisions held as under :--

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this Court is clear that in order to convict a person u/s 306, IPC there has to be mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

16. In order to deal with the submissions advanced by the learned counsel for the parties effectively, it is necessary to advert to the material evidence adduced and produced by the prosecution. In the present context. Durga Prasad (PW-1) the complainant, who is the father of deceased Mamta, stated that marriage of his daughter namely Mamta was solemnized with respondent Shrideen. After marriage she started residing with her husband at village Mowadehi. On the day of 1-7-1989, he was at village Sirgori, at about 10 a.m., Sukhdas-servant of respondent came and informed that Mamta had died. He has gone to village Mowadehi and saw her dead body. Her face and nails were green. The saliva was driving from her mouth. He went to police station Chhindwara and lodged merg report Ex. P/1. He also proved inquest Panchnama Ex.. P/3.

17. Durga Prasad (PW/1) further stated that two months before the incident, his son Vinod brought the deceased at his home, at that time deceased had told him that respondent Shrideen defamed her that she had illicit relationship with his elder brother Kamdeen. Durga Prasad further stated that the respondent threatened her to remarry because she did not deliver any child during the period of 3 years after the marriage. The respondent used to drink and torture the deceased. He also stated that before 8 days of the incident, nephew of respondent namely Brij Kishore (PW-16) told him that the respondent made her to eat poison tablet and she became unconscious. He immediately went to see her. When Mamta regained consciousness, she informed him that the respondent told her to take the tablet to prove her faithfulness to him. When he enquired, the respondent admitted such incident and explained that he did it to test her faithfulness when he was under the influence of liquor. But Brij Kishore (PW-16) did not support his statement.

18. During his cross-examination, Durga Prasad (PW-1) reiterated that he did tell

the said story to police but such story is missing from police statement D-1 and merged intimation Ex. P/1. Such important omission reduced the reliability of his statement. His statement is also not supported by Nanhibai (PW-4) and Vinod (PW-5). Nanhibai, who is the mother of the deceased stated that her daughter had no issue. 15 days before the incident, her son Vinod brought the deceased at her home, Mamta informed her that the respondent asked her to swallow crushed bangles and defamed her with allegation that she had illicit relations with her husband's brother Kamdeen. Vinod Kumar (PW-5) who is the brother of deceased stated that before 15 days of the incident, he brought the deceased at his home. She stayed for 5 days. Mamta informed him that the respondent used to beat and to defame her with allegation that she had illicit relation with Kamdeen.

19. It is found that the statement made by Durga Prasad (PW-1) is exaggerated and full of omissions. Durga Prasad (PW-1), who is father of deceased, stated that two months before the incident, his elder son Vinod brought the deceased at her home. But Nanhibai (PW-4) who is the mother of deceased and Vinod (PW-5) stated that 15 days before the incident, he brought the deceased at his parental home. Thus, the statements of Durga Prasad (PW-1), Nanhibai (PW-4) and Vinod (PW-5) are contradictory to each other.

20. Considering the testimonies of these witnesses who are parents and brother of victim, Mamta made allegations of harassment against the respondent but such sweeping allegations would not amount to abetment of offence of commission of suicide, and something more is required u/s 107 of the Indian Penal Code, which provides that harassment should be of such a nature, which amounts to instigation to any person to commit suicide or conspiracy accompanied by an act or illegal omission to commission of suicide, but the said ingredients are missing in the instant case, and therefore, offence u/s 306 of the Indian Penal Code cannot be said to be made out by the prosecution against the accused person. There is no infirmity in the impugned judgment of acquittal passed by the trial Court u/s 306 of the IPC.

21. The respondent had been acquitted from the offence punishable u/s 498A of the Indian Penal Code by the trial Court.

22. The ingredients of Section 498A of the IPC are as follows :--

498-A :-- Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation :-- For the purpose of this section "cruelty" means --

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

23. On perusal of Section 498A of the IPC, it is clear that it has two limbs. The first limb of Section 498A of the IPC provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished. "Cruelty" has been defined in clause (a) of the Explanation to the said Section as any willful conduct which is of such a nature as is likely to drive to a woman to commit suicide. When there is unlawful demand of any property or valuable security, the case comes under clause (b) of the Explanation to Section, 498A of the IPC.

24. Cruelty has been defined in the Explanation for the purpose of Section 498A of the Indian Penal Code. The consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman are required to be established in order to bring home the application of Section 498A of the IPC.

25. Keeping in mind the aforesaid position of law and coming to the facts of the present case, admittedly victim Mamta was married with respondent three years before her suicide occurred on 30-6-1989. Durga Prasad (PW-1) Nandkishore (PW-3), Nanhibai (PW-4), and Vinod (PW-5) narrated specific instances of cruelty at the hands of respondent to victim Mamta that respondent Shrideen defamed her that she had illicit relationship with his elder brother Kamdeen and harassed her. Therefore, it appears that Mamta committed suicide due to harassment made by respondent. Hence the evidence against respondent comes within the purview of the cruelty u/s 498A of the IPC.

26. Having regard to the totality of the circumstances and the evidence on record, the prosecution case inspires the confidence that the respondent subjected victim Mamta to cruelty during the period of her consortium with him leading to committal of suicide. In these circumstances, the respondent Shrideen is found guilty u/s 498A of the IPC. In the result, the present appeal is partly allowed.

27. As far as the question of sentence is concerned the learned counsel of respondent submitted that respondent remained in jail for about 23 days. He is now 45 years of age. He is leading peaceful life with his family as normal member of society. Hence jail sentence would badly affect him and his family. He prays that the respondent should be punished with fine only.

28. Learned counsel for the appellant/State does not oppose the prayer of respondent's counsel.

29. The incident occurred on 30-6-1989 and almost twenty two years passed since then. The respondent has already suffered the agony of the trial and long

pendency of the appeal. It appears that no fruitful purpose would be served by sending him to jail in these circumstances. In my considered opinion, in addition to undergone jail sentence of the respondent, the fine of Rs. 7,000/- would be sufficient and will meet the ends of justice. Therefore, the respondent is sentenced to jail for the undergone period and punished with fine of Rs. 7000/- for the offence u/s 498A of the Indian Penal Code. The said amount be deposited in the trial Court within two months, failing which the respondent/accused shall undergo simple imprisonment for three months.

30. In the result, this appeal is partly allowed on the terms indicated herein above. The office is directed to send a copy of this judgment along with record to the trial Court for information and compliance.