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State of U.P. Vs Deepak Poddar, Smt. Padma Poddar and Dinesh Poddar

None

Court: Allahabad High Court

Date of Decision: Aug. 17, 2007

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 304B, 306, 498A

Citation: (2008) 1 DMC 61

Hon'ble Judges: V.K. Verma, J; R.C. Deepak, J

Bench: Division Bench

Judgement

R.C. Deepak, J.
The State of U.P. after the grant to leave has filed this government appeal against the judgment and order dated 5.6.1999

passed by Sri Vinod Kumar, learned Additional Sessions Judge, Agra in Sessions Trial No. 52 of 1994 under Sections 498A, 304B IPC, Police

Station Acchnera, District Agra whereby he acquitted the accused respondents Deepak Poddar, Smt. Padma Poddar and Dinesh Poddar.

2. According to the first information report, Kanika was the sister of Asim Sarkar resident of 52/81 A, Barakhamba, Police Station Shahganj,

District Agra. She was married to Deepak Poddar resident of Kasba Kerawali, Police Station Acchnera, District Agra. It is alleged that she was

harassed and beaten for scooter and fridge in dowry by her in-laws just after the solemnization of marriage, that on 24.9.1991, the accused

Deepak Poddar and Smt. Padma Poddar burnt her to death. Asim Sarkar the brother of the deceased, lodged the first information report (Ext.

Ka-4) registered as case crime No. 247 of 1991 under Sections 498A, 304B IPC against the accused concerned.

3. On the other hand, Deepali, the sister-in-law of Kanika and the sister of Deepak Poddar submitted an application on 24.9.1991 at Police

Station Acchnera to the effect that her bhabhi (Kanika) died of self-immolation inside her room. This application was given effect to at report No.

II in the G.D. Dated 24.9.1991 at 9:40 a.m. This information put the police machinery into motion, as Sub-Inspector D.P. Awasthi and Naib

Tehsildar Bharat Lal reached the place of occurrence, took the dead body of the deceased into possession and prepared the inquest (Ext. Ka-7).

The informant Asim Sarkar, her brother and Smt. Sapna Sarkar wife of Uttam Sarkar the bhabhi of Kanika participated in the inquest. The dead

body was sent for post-mortem examination. Dr. Ashish Srivastava conducted the post-mortem on her dead body and found superficial to deep

burn injuries present all over body almost 100% burn. The post-mortem examination report is Ext. Ka-22. The doctor opined the cause of her

death shock as a result of anti-mortem burn injuries.

4. The investigation into the case was taken by Surendra Pratap Rai, the Circle Officer. He recorded the statements of the prosecution witnesses

and prepared the site plan Ext. Ka-6. He recovered a latch of the door. The recovery memo is Ext. Ka-7. He also received a letter from Asim

Sarkar said to have been written by Kanika, which is Ext. K.a-3. After the completion of the investigation, he submitted the charge-sheet No. 199

of 1999 (Ext. Ka-2) under Sections 498A, 306 IPC against the accused concerned. The trial court framed charges under Sections 498A, 306

IPC against them, who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution examined as many as five witnesses. Asim Sarkar (P.W.I) and Uttam Sarkar (P.W.2) are the witnesses of

fact and. Bani Singh (P.W.3), Surendra Pratap Rai, the investigating officer (P.W.4) and Bharat Lal (P.W.5) are the formal ones. Since the

genuineness of the postmortem examination report was admitted by the learned Counsel for the accused-respondents, so the doctor was not

examined.

6. The accused examined Munna (D.W. 1), Ram Kishan (D.W.2) and Dr. B.B. Yadav (D.W.3) in their defence.

7. The trial court after going through the evidence on record, recorded the order of acquittal against which the present Government Appeal has

been filed already referred-to-above.

8. We have heard Sri M.C. Joshi, learned Addl. Government Advocate for the State, Sri V.C. Tiwary, learned Senior Counsel with the assistance

of Sri A.K. Awasthi, learned Counsel for the accused-respondents and perused the record.

9. It has vehemently been argued by the learned Counsel for the State that the deceased (Kanika) was burnt to death for dowry, but the trial court

failed to appreciate the cognizable evidence in this regard and considered it to be a suicidal death and passed the order of acquittal. He submitted

that the order of acquittal may be set-aside and the accused be convicted for an offence if punishable under Sections 498A, 306 IPC.

10. On the other hand, learned Counsel for the accused-respondents strongly contradicted the arguments of the learned Counsel for the State

expressing that there is no oral or documentary or circumstantial evidence to suggest that the deceased did commit no suicide. There is a positive

evidence to the effect that she died of self-immolation. The trial court reached at a right conclusion that there is no evidence of demand of dowry

against the accused-respondents and also to have burnt to death the deceased, therefore, the order of acquittal is justified, convincing and

according to the evidence on record.

11. There is no dispute that Smt. Kanika and Deepak Poddar did not enter into a marital tie prior to 4Ã¯Â¿Â½ years from the death of Kanika. This

fact is also not in dispute that the deceased did not die of burn injuries on 24.9.1991 at her matrimonial house. Deepali is the sister-in-law of

Kanika and the sister of Deepak Poddar. She submitted an application at the police station concerned disclosing therein that her bhabhi (Kanika)

committed suicide and this information finds place at report No. 11 in the G.D. Dated 24.9.1991 at 9:40 a.m. This information activated the police

to have visited the place of occurrence, prepared the inquest wherein Asim Sarkar (informant), his brother Arvind Sarkar and Smt. Sapna

Sarkar''s participation and their signatures are also not in dispute. Asim Sarkar (P.W.I), the informant has admitted in his statement that he received

the information at 11:30 a.m. On 24.9.1991 in regard to the death of his sister, but he did not lodge the first information report promptly, but the

same was lodged at 23.15 hours. The reason for lodging the delayed F.I.R. is that he had lost his mental balance and the people were advising him

in different ways. This explanation does not inspire confidence specially when he, his brother Arvind Sarkar and Smt. Sapna Sakar have

participated in the inquest of the deceased and also signed the inquest.

12. To examine the evidence in regard to the demand of dowry and harassment to the victim, it is the evidence of both of the prosecution

witnesses, P.W. 1 and P.W. 2 that there was a demand of scooter and fridge in dowry and that too through the victim. There is no disclosure in

the first information report that this demand was made by the accused directly to the parents of the deceased, but later on it was developed in the

evidence. The deceased along with her husband and parent-in-laws was residing in a rented house of Ram Kishan (D.W.I). Ram Kishan has

deposed in his statement that the deceased and the accused were living in his house at rent for the past 10 years. There was no dispute between

husband and wife and there was no demand of dowry, as no quarrel took place in this regard. His statement further indicates that there was love

and affection between the deceased and her husband. The allegation of demand of dowry and harassment was raised for the first time after the

death of the victim. A perusal of the letter (Ext. Ka-2) written by the deceased does not disclose any demand of dowry or harassment to her, but it

goes to suggest that there was love and affection between the husband and wife and both of them have care for each other. This letter was written

by the deceased to her bhabhi for proper respect and care to her husband. These evidences and the circumstances indicate that there was no

demand of dowry or harassment to the victim.

13. The crucial question which crops up for consideration is whether the deceased was burnt to death or she died of self-immolation?

14. The evidence of Asim Sarkar (P.W.I) and Uttam Sarkar (P.W.2) indicates that the deceased was burnt to death. These two witnesses are not

the eye-witnesses of the occurrence, as they were not present when the deceased sustained burn injuries. The basis of their statements may be a

presumption. It may be their sentiments to allege that their sister was done to death. There is no other evidence or circumstance to suggest that she

was burnt to death.

15. It is the positive case of the accused that Kanika committed suicide inside her room. The investigating officer had visited the place of

occurrence and he found that the dead body of the deceased was lying in burnt condition. He also recovered a latch of the broken door. He

interrogated Km. Kamlesh daughter of Ram Kishan. Ram Kishan is the landlord of house. Km. Kamlesh disclosed to the investigating officer that

from the roof of her house she saw the smoke coming from the room of the Doctor (Deepak Poddan. She raised the alarm, as a result, the people

of the locality including Munna and others rushed there. They dashed the door and the door was broken and the dead body of the deceased was

found inside. The investigating officer also took down the statement of Deepali, the sister-in-law of the deceased, who disclosed that her brother

Dr. Deepak Poddar was at his Clinic, her bhabhi was inside the room and the room was bolted from inside. The smoke was coming, the door was

broken and she was found lying dead. The statement of Munna (D.W. 1) indicates that he along with the others dashed the door, broken the same

and he saw that the room of the deceased was full of smoke and the deceased was lying dead inside the room. The statement of Ram Kishan

(D.W.2) shows that the deceased committed suicide in her room. There was love and affection between the husband and wife and there was no

demand of dowry or any harassment. The deceased and her in-laws were living in his house on rent for the past 10 years.

16. Now the question is, if the deceased has committed suicide, what was the reason of her doing so. Whether there is any evidence on record to

suggest that she was tortured/harassed/abated by the accused to commit suicide. The cause shown for committing her suicide is her ailment. The

deceased, after the delivery of her second issue, was suffering from stomach trouble. She was provided medicines. The statement of Dr. B.B.

Yadav (D.W.3) indicates that the deceased was brought to him for medical treatment and it was disclosed her that she was suffering from stomach

trouble. This may be a cause of her committing suicide. The trial court appears to have considered all the evidence on record, oral, documentary

and circumstantial and reached at a right conclusion that there was no demand of dowry nor there is any evidence to show that the deceased was

burnt to death. The order of acquittal appears to be justified and convincing and no interference in the same is warranted.

17. There is no merit in the Government Appeal and the same is liable to be dismissed and it is accordingly dismissed.

18. The personal and surety bonds of the accused-respondents are hereby cancelled and their sureties are discharged.

19. The trial court''s record be sent back.