

(2009) 08 MP CK 0058
Madhya Pradesh High Court
Case No: None

Uma Verma and Suresh Kumar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Aug. 27, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302, 304B, 306, 498A

Citation: (2009) 4 MPHT 430

Hon'ble Judges: Ramesh Surajmal Garg, J; I.S. Shrivastava, J

Bench: Division Bench

Final Decision: Allowed

Judgement

R.S. Garg, J.

The appellant Uma Verma and appellant Suresh Kumar have respectively filed Criminal Appeal No. 2177/2000 and Criminal Appeal No. 2699/2000 being aggrieved by the judgment dated 24-8-2000 passed in Sessions Trial No. 521/1999 by learned Additional Sessions Judge, Jabalpur convicting each of the appellant u/s 302, IPC, sentencing them to undergo RI for life and fine of Rs. 1000/-, in default of payment of fine to undergo further RI for four months and convicting the appellant Suresh u/s 498-A, IPC sentencing him to undergo RI for two years and pay fine of Rs. 1000/-, in default of payment of fine to undergo RI for four months, the substantive jail sentence to run concurrently, have filed this appeal.

2. The prosecution case as it appears from the written report is that deceased Mamta was married with appellant Suresh Kumar on 25-6-1995, since after marriage accused Suresh Kumar was cruelly treating the deceased, he was also demanding money from the deceased and her parents. As a result of the cruel treatment extended to the deceased in connection with demand of dowry she died an unnatural death. On basis of the fact the Court below levelled charges u/s 304-B and

Section 498-A, IPC, in the alternative u/s 302, IPC.

3. The First Information Report further says that on 5-7-1999 deceased Mamta had come to her parental house, on 6-7-1999 accused Suresh telephoned Mamta that some theft was committed at their house, therefore, she was to come back. It appears that Sharad (P.W. 6) brother of deceased Mamta accompanied the deceased as he wanted to drop Mamta at her matrimonial house. According to the prosecution the moment Mamta entered the house, it was found that Uma Verma was sitting in the house, accused Suresh after picking up some quarrel gave one slap to the deceased. When Sharad (P.W. 6) wanted to intervene in the matter, the deceased Mamta asked him to go back. It has come on the record that a telephonic information was sent by Mannulal, Supervisor, VFJ Security to the Police Station at about 10.45 p.m. that Mamta wife of Suresh had died because of the extensive burns.

4. After receiving the information about the unnatural death the police agency came into action, the Investigating Officer came to the spot seized the body and sent the same for post-mortem. He prepared certain panchanamas on the spot. Though the incident had taken place on 6-7-1999 Kattulal alias Fattulal (P.W. 1) lodged a written report on 8-7-1999 to the police that accused Suresh was ill-treating the deceased and making demand of dowry and he anticipated foul play in the death of the deceased. On that report further investigation was made, statement of the witnesses were recorded, charge-sheet on completion of the investigation was filed, the accused were subjected to trial and on conclusion of the same they were convicted and sentenced as referred to above.

5. Shri S.C. Datt, learned Senior Counsel for the appellant Uma Verma, after taking us through the statements of Sharad (P.W. 6) and his case diary statement (Exh. D-3) submitted that Sharad (P.W. 6) in his case diary statement (Exh. D-3) did not inform the police that when he entered the house he had seen Uma Verma in the house. It is submitted by Shri Datt that from perusal of Exh. D-3 it would appear that according to Sharad he had seen some "Maya Verma", Nurse in the house of the accused. It is submitted by him that from the records it does not appear that except the statement of Sharad there is any other evidence to connect appellant Uma Verma with the alleged incident.

6. Smt. Chanchal Sharma, learned G.A. for the State, on the other hand, submitted that from a further reading of Exh. D- 3, it would appear that Suresh and Uma Verma were fleeing away from the back door and under the circumstances the statement of Sharad that Uma Verma was sitting in the house has to be accepted as a correct statement.

7. So far as Exh. D-3 is concerned the Public Prosecutor did not bring that evidence on record to show Uma Verma and Suresh were seen running or fleeing away from the spot. Assuming such evidence could be brought on record or any fact was

brought on record then too the same would not have been of any help and assistance to the prosecution because in the earlier part of the statement recorded u/s 161, Cr.PC, Sharad Kumar had said that on inquiries he was informed that Suresh and Uma Verma were seen fleeing away from the spot. To prove that Suresh and Uma Verma were seen fleeing away from the spot, prosecution had examined Mahesh Singh Rathod (P.W. 3). Unfortunately, for the prosecution Mahesh (P.W. 3) turned hostile and did not support the prosecution. In absence of any evidence that Uma Verma was seen in the house, in the company of accused Suresh and in view of the material omission in Exh. D-3 the case diary statement, we find no difficulty in holding that the prosecution has failed to bring home the guilt against accused Uma Verma.

8. For the reasons aforesaid, we hold that the learned Court below was absolutely unjustified in convicting the appellant Uma Verma, the findings recorded against her interest is hereby set aside. Uma Verma is acquitted of all the charge. She is on bail, her bail bonds are discharged.

9. Shri Ramesh Shrivastava, learned Counsel for the appellant Suresh, had submitted that there is nothing on the record to show that appellant Suresh committed murder of the deceased. It is submitted by him that the principles of last seen would not apply to the present case because presence of the husband in his own house is not unnatural. His further submission is that in a case like present the presumptions could be that the deceased died an unnatural death, she was murdered, she died accidentally or she had committed suicide. His submission is that in relation to abetment for committing suicide no charge was framed, therefore, charge of suicide cannot be levelled against the appellant Suresh. For Section 304-B, IPC his statement is that though the accused was charged for commission of the said offence but since after his acquittal on the said charge State has not filed an appeal and the said acquittal has become final. For charge u/s 302, IPC, it is submitted by him that in absence of some evidence that the accused was to be benefited by committing murder or had some reason to commit murder the extreme presumption of committing murder could not be raised.

10. Smt. Chanchal Sharma, learned Government Advocate for the State, on the other hand submitted that as the accused was last seen in the company of the deceased and as the accused has not come out with any explanation as to how the deceased died, the Court below was justified in raising a presumption against the accused in relation to commission of murder.

11. Undisputedly in connection with the domestic violence except the statement of P.W. 6, we do not find any other evidence. According to Sharad (P.W. 6), he had gone to drop his sister at the house of the accused. When his sister/deceased entered the house accused gave one slap to the deceased and, thereafter, Sharad (P.W. 6) returned back. Nobody knows as to what happened thereafter. Whether, the deceased committed suicide in retaliation to the action of the accused in giving her

a slap or she died an unnatural death under some accident or she was murdered. If the accused had been acquitted for offences punishable u/s 304-B, IPC and was never charged for offence punishable u/s 306, IPC, then the burden was extra heavy upon the prosecution to show that the accused committed murder of his wife. True it is that the accused has not come forward with any explanation as to how his wife had died but the fact still remains that murder could not be the only presumption in the facts of the present case.

12. Taking into consideration the totality of the circumstances, we are of the opinion that the Court below was unjustified in drawing presumption against accused Suresh that he committed murder of his wife. Accused Suresh is acquitted of charge u/s 302, IPC.

13. However, there is sufficient evidence on the record that accused Suresh maltreated/treated the deceased with cruelty. For that we hold that the Court below was justified in convicting the appellant-Suresh u/s 498-A, IPC.

14. Though it was submitted by the learned Counsel for the appellant that for charges u/s 498-A, IPC the jail sentence be reduced to the period already undergone but, taking into consideration the totality of the circumstances, we are of the considered view that the quantum of the sentence does not call for interference. We are now told that the accused has already undergone more than 10 years, if that be so he be immediately released, if not required in any other case.

15. The appeal of Uma Verma is allowed in toto while the appeal of accused Suresh is allowed in part and to the extent indicated above.