Prahlad Vs State of M.P.

Court: Madhya Pradesh High Court

Date of Decision: May 18, 2010

Acts Referred: Penal Code, 1860 (IPC) â€" Section 302, 304B, 306

Citation: (2011) ILR (MP) 489

Hon'ble Judges: S.L. Kochar, J; Brij Kishore Dubey, J

Bench: Division Bench

Final Decision: Allowed

Judgement

S.L. Kochar, J.
The Appellant has filed the aforesaid appeal against the judgment and order of conviction and sentence passed by the

learned I Addl. Sessions Judge Mhow, District Indore in S.T No. 96/2000 judgment dated 12/9/2000 by which the Appellant stands convicted

Under Sections 302 of the IPC, sentenced to undergo RI for life with fine of Rs. 1000/- in default of payment of fine to undergo further RI for six

months.

2. In nut shell, the prosecution case as unfolded before the trial Court is that Rekhabai was married with Appellant before 5-6 years of her death

on 28/10/1999. Upto two years of her marriage she was kept properly in her in-laws house, thereafter accused persons started beating and ill-

treatment with Rekhabai. She was not provided proper food, cloth and other facilities. She was pressurized for bringing money to purchase KADI

(silver ornament). Before three months of the incident, Rekhabai came to her parents house and disclosed about torturous behaviour by the

Appellant and acquitted co-accused, her sister-in-law. Inspite of this, Rekhabai was sent back by her father Kaniram to her in-laws house. On

28/10/1999 Rekhabai died because of consuming some medicine. Kaniram (P.W. 1), father of deceased lodged the written report of the incident

on 4/11/1999 (Ex.D. 1) on the basis of which FIR (Ex.P. 9) was registered by SHO B.L. Soni (P.W. 12). After admission of the deceased in the

hospital, she was not in a position to give dying declaration but Dr. Mahesh Mohbiya (P.W. 2) recorded the statement of the Appellant (Ex.P. 2)

wherein Appellant has disclosed that his wife was suffering from headache and he gave metacine and saridone tablet to her but what she had

consumed he was not knowing and after her ill-health he brought her to the hospital and all these events had taken place before 45 minute. This

statement was recorded in presence of Chhogalal and thumb impression of the Appellant was also taken at ""B to B"" part by Dr. Mohbiya.

Because of deterioration in condition of deceased, she was shifted to M.Y. Hospital where she died in the intervening night of 28th and 29th

October, 1999. After completion of inquest enquiry, the dead body was sent for postmortem examination and the same was performed by Dr.

N.M. Unda (P.W. 14). Postmortem report is Ex.P. 10. Vomitting and viscera of the deceased were sent to FSL and its report is Ex.P. 9. This

report has confirmed that deceased had died because of sulfas poison. Investigating Officer, after recording the statements of the witnesses

acquainted with the facts of the case and on completion of investigation, filed the charge sheet against the Appellant and acquitted co-accused Smt.

Ramubai, the sister-in-law of the Appellant for commission of offence Under Sections 306, 304(B) and 302 of the IPC.

3. The accused persons denied the charges, therefore, put to trial. They have not examined any witness in defence. Learned trial Court, after

recording the statements of the prosecution witnesses and hearing both the parties, while acquitting co-accused Ramubai, convicted and sentenced

the Appellant as noted herein above.

4. We have heard the learned Counsel for parties and also perused the entire record carefully.

5. It called out from the record that conviction of the Appellant is based on testimony of Dr. Mahesh Mohabiya (Ex.P. 2), the statement of

Appellant recorded by him in the hospital. Learned trial Court, while discussing the circumstantial evidence held in para 27, 28 and 29 that

Appellant had admitted giving of seridone and metacine tablet to his wife before Dr. Mohabiya, therefore, burden lies on him to prove that the

tablets given by him were the same tablets but he failed to adduce any evidence to explain this circumstance especially when he was alone with his

wife in the hospital. In para 32, learned trial Court has held that because of negligence and lapses on the part of Investigating Officer, prosecution

has failed to establish beyond reasonable doubt the fact of tense relation between Appellant and deceased, at the same time the finding has also

been given that Appellant was not having cordial relation with his wife.

6. The main question for us to decide is that up to what extent statement of Appellant (Ex.P. 2) recorded by Dr. Mohabiya can be acted upon and

what would be its probative value?

7. Dr. Mohabiya has deposed that deceased was not in a condition to speak, therefore, statement of her husband/Appellant was recorded in

presence of his elder brother Chhogalal (not examined by the prosecution) and Appellant gave statement that deceased was suffering from

headache for which he had given her metacine and seridone tablets but what she had consumed was not known to him and after felling ill, they

brought her to the hospital on the basis of this statement, in our considered view it cannot be said positively that Appellant instead of giving

metacine and seridone tablets gave sulfas tablets to deceased.

8. There are three cardinal principles of criminal jurisprudence (1) prosecution is required to prove its case beyond reasonable doubt (2)

prosecution cannot take advantage of weakness of the defence case and is required to stand on its on leg (3) whenever there are two sets of

evidence or two inferences are possible, the evidence or inference in favour of the accused has to be acted upon.

9. We have examined the evidence adduced by the prosecution in the instant case and judgment rendered by the trial Court. On an anvil of above

mentioned three principles of criminal jurisprudence, in our considered view, the learned trial Court has erred in holding that since the Appellant has

admitted giving of metacine and seridone tablets, burden lies on him to establish that no other tablet like sulfas poison was given to the deceased.

There is no evidence on record that the Appellant was all alone in the company of the deceased for a particular period and did not leave the

company of his wife before giving of metacine and seridone tablets or after supplying the same, therefore, the possibility of consumption of sulfas

tablets prior or after supplying of metacine and seridone tablets by the Appellant to his wife cannot be ruled out.

10. It is also clear from the contents of statement of Appellant (Ex.P. 2) that he had simply gave metacine and seridone tablets. Nowhere it is

mentioned in his statement that same tablets were consumed by the deceased before him. On the contrary, it is mentioned in the statement that

what else had been consumed by the deceased he was not knowing.

11. It is admitted position that written complaint was filed by the father after lapse of seven days and on the basis of this complaint, FIR was

registered. It is also highly abnormal that Doctor who attended the deceased first in point of time in the hospital would record the statement of her

husband or any relative. There is no such procedure prevalent in medico legal matters. Normally either Doctor records the statement of patient or

mentioning history in MLC report as disclosed by the patient or the persons who came along with the the patient. In document (Ex.P. 2), date,

time and place where this document was prepared or statement of Appellant was recorded by Dr. Mohabiya are not mentioned. Without any

basis, learned trial Court in para 21 has given finding that statement (Ex.P. 2) was sent to the concerned police station by Dr. Mohabiya on the

same day. We have gone through the statements of all the witnesses examined by the prosecution including police personnels but nowhere it is

mentioned that Ex.P. 2, the statement of Appellant recorded by Dr. Mohabiya was sent to the police on the same day, therefore, possibility of

preparation of this unusual document after registration of the crime cannot be ruled out. Dr. Mohabiya (P.W. 2) has also nowhere stated in the

statement that statement (Ex.P. 2) of the Appellant was sent by him to police on the same day. As a matter of fact in the entire evidence adduced

by the prosecution, there is no material to show as to how investigating officer received document (Ex.P. 2). The attesting witness of document

Ex.P. 2 Chhogalal has not been examined by the prosecution and no explanation has been given as to why he was not examined. All these

circumstances are shrouded with suspicion, therefore, it would be hazardous to rely upon document (Ex.P. 2) as circumstantial evidence against

the Appellant.

12. Resultantly, on the basis of aforesaid discussion, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt

against the Appellant. Hence this appeal is allowed. Conviction and sentence passed by the trial Court against the Appellant are hereby set aside.

Appellant is in jail, the learned trial Court is directed to release him forthwith if not wanted in any Criminal case.