

(2017) 05 MP CK 0005
MADHYA PRADESH HIGH COURT
Case No: 1287 of 1997

Hariom S/o Munshilal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: May 3, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
- Indian Penal Code, 1860, Section 34, Section 498A, Se

Hon'ble Judges: Alok Verma

Bench: Single Bench

Advocate: Vivek Singh, P.R.Bhatnagar

Judgement

1. Aggrieved by the judgment of conviction passed by the learned Sessions Judge, Shajapur in S.T.No.155/2014 dated 19.12.1997, this criminal appeal is filed challenging the impugned judgment and conviction under Section 306 and 498-A read with Section 34 of IPC and sentence of 4 years each and fine of Rs.2000/- under Section 306 / 34 of IPC and sentence of 1 year R.I. each and fine Rs.1000/- under Section 498-A / 34 of IPC, with default stipulation.

Appellant no.2-Chandrakalabai W/o Munshilal was reported expired on 03.02.2003 and the appeal filed by her was ordered to be abated by order dated 19.08.2004.

2. The prosecution case in brief is that the accused Hariom S/o Munshilal, Chandrakalabai, wife of Munshilal are all residents of village Lima Chouhan, police station Chappiheda, district Shajapur. The deceased Sumanbai was married to accused Hariom in the year 1976. Accused Chandrakalabai is mother of accused Hariom and mother-in-law of the deceased. Munshilal (PW-1) is the father-in-law of the deceased and father and husband respectively of accused Hariom.

3. Vasudev (PW-4) is brother of the deceased. Whenever Sumanbai came to the house of her brother, she used to complain against the present appellants that they had been fighting with her and beating her and treating her with cruelty. On 19.09.93 she left her matrimonial house without informing anybody. Munshilal, father-in-law of the deceased tried to search her for two days and thereafter on 21.09.1993 he lodged a report of missing person at police station Lima Chouhan. The deceased was searched by Devilal(PW-11) and Shambhu Dayal (PW-12). A report of the missing persons was prepared by Shambhu Dayal (PW-12) on 21.09.1993. Skeletal remains of woman was found in nearby forest of village Lima Chouhan and near the dead body, one saree and undergarment of a woman were also found. One golden Mangalsutra worn by married women was found near the skeletal remains. On the basis of her garments and Mangalsutra, the dead body was identified as that of deceased Sumanbai. Thereafter, a case was registered under Section 306 / 34 of IPC.

4. After investigation Section 498-A of IPC was also added. During investigation a letter written by appellant no.1 was seized which is marked as Ex.P-17. This letter was sent to the handwriting expert for his opinion whether the signature on the letter was of appellant no.1. The report was given in positive by the handwriting expert.

5. The trial Court framed charges under Section 498- A/34 and 306/34 of IPC . The appellants abjured their guilt. The trial Court recorded statements of prosecution witnesses, examined the appellant under Section 313 of Cr.P.C., also, recorded statements of defence witnesses and return a finding of guilt under Section 306 / 34 and 498-A of IPC as aforesaid.

6. Aggrieved by this order, this appeal is filed on the ground that (i) defence version was totally discarded by the trial Court, while statement of the prosecution witnesses were believed which is against law (ii) there were material omissions and contradictions which were not taken into consideration by the trial Court (iii) the trial Court also failed to take into consideration whether the deceased Sumanbai committed suicide or her death was accidental was not proved by the prosecution (iv) the trial Court also erred in relying the statements of R.P.Pathak(PW-13) and Vasudev(PW-4) regarding alleged letter.

7. Learned counsel for the State supports the impugned judgment and pray that the appeal be dismissed and findings of the lower Court be affirmed.

8. Regarding offence under Section 498-A of IPC, the Court relied on Ex.P-17. This letter was written on 20.07.1993 and handed over to the deceased Sumanbai. The contents of the letter showed that there was some incident on the festival of holi on 09.03.1993. The appellant no.1 admitted in the letter that he was instigated by his mother, appellant no.2 and on her instigation he committed a wrong for which he was ashamed. He also stated that he asked the deceased Sumanbai and also his

in-laws to forgive him for this. He further promised that in future such incident would not be repeated. He also expressed that he wanted his transfer from village Lima Chouhan and wanted to shift his family to some other place. He also expressed his gratitude towards his in-laws that they had given him another opportunity to improve.

9. This apart, the statement of Vasudev (PW-4) was taken into consideration who is brother of the deceased. He also stated that the deceased used to narrate to him that she was not treated properly by the appellants. Bhikamchandra (PW-9) is an independent witness. He stated that the deceased Suman Bai came to his house alongwith 2-4 other ladies. She told him that she was coming from Bhopal. Her parents lived at Ujjain and she was a resident of village Lima Chouhan. She told him that she was wife of appellant no.1. He took her to Sarpanch Kanhaiyalal. He gave her clothes etc. He further stated that the deceased told that appellant no.2 was not treating her properly and she used to harass her. Her (the deceased) husband also used to harass her and behaved in a very strict manner. Durga Shankar is her distant brother. After some time father of appellant no.1 Munshilal came to his house and took Sumanbai with him. Durga Prasad (PW-10) is also resident of Sandavata. He confirmed in his statement that Sumanbai came to village Sandavata and met Bhikamchandra and he also confirmed that Bhikamchandra (PW-9) told him everything Sumanbai stated to him(Bhikamchandra). When father of appellant no.1 came to his village to take Sumanbai back he also asked him not to harass her in future. R.P.Pathak, (PW-13) is the hand writing expert who prepared the report Ex.P-42 and as per the report the signature on Ex.P-17 matched with that of appellant no.1.

10. Learned counsel for appellants submits that deceased Sumanbai was mentally upset. She left the house and went away. He submits that statement of Bhikamchandra (PW-9) supports this view. On that occasion also she left the house without informing anybody at her in-laws house.

11. I have gone through the statements of Vasudev (PW-4), Bhikamchandra (PW-9) and Durga Prasad (PW-10) and on the basis of these witnesses it is apparent that she was subjected to cruelty and harassment by the appellants. Ex.P-17 also it is properly proved and indicates that she was not happy with the treatment given by the appellants to her.

12. Coming to the point that what was the nature of her death whether she committed suicide or whether it is accidental or homicidal is to be seen. Committing suicide is an essential ingredient of offence under Section 306 of IPC and also under Section 498-A because cruelty should be of such nature which has driven a person to commit suicide. Apparently, there is no medical evidence to confirm nature of death of the deceased and the doctor who examined the skeletal remains of the deceased expressed no opinion regarding the nature of her death and kept it open. There were gnawing effects present on the bones exposing the bone marrow in long

bones indicating mutilation of body by animals. However, there is no indication to show whether the death was suicidal or accidental.

13. Counsel for the appellant submits that the incident took place in the month of September, when rainy season was in full force and the river on the bank on which the dead body was found, there was a possibility that accidentally she fell in the river and died. However, we cannot rest our findings on suspicion and imagination and as such, there is no finding to show that she committed suicide.

14. Learned trial Court took the attending circumstances into consideration holding that she was treated with cruelty and she was having three issues, leaving them, she left her matrimonial house, without informing anybody and in these circumstances, according to the trial Court, it may be assumed that she left the house only to commit suicide. This again was based on imagination. Circumstances cannot be taken into consideration to conclude that she committed suicide and, therefore, if the main ingredients of Section 306 of IPC that abatement should be to commit suicide is not proved and as such, so far as charge under Section 306 / 34 of IPC is concerned, charge is not proved.

15. Coming back to charge under Section 498-A / 34 of IPC there are ample evidence to show that she was subjected to cruelty by the present appellants. The "cruelty" is defined in Section 498-A of IPC which reads as under:-

"(a) any willful 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."

16. It is apparent that nature of cruelty should be such that it is likely of a woman to commit suicide. Since in this case, suicide is not proved, then this limb of Clause (a) of explanation appended to Section is not applicable in the present case. However, second limb which provides that when there is injury caused to the health of woman which includes mental health also, such behaviour amounts to cruelty.

17. In the considered opinion of this Court, there is ample evidence available on record to show that she was treated with such cruelty that her behaviour appear to be that of a person who had lost mental equilibrium. She reached on her own alongwith some other women to village Samavat and came in contact with Bhikamchandra (PW-9). She was not having any proper clothes to wear and that is

why the witness gave her clothes also. This showed her mental state. Before the date of incident on 19.09.1993, she again left the house without informing anybody while she was having three children and such behaviour shows a loss of mental equilibrium and as pointed out by other evidence like statement of Vasudev (PW-4) and Ex.P-17 she was not treated properly by the appellants and, therefore, loss of mental equilibrium could be attributed to such behaviour.

18. In this view of the matter, so far as charge under Section 498-A is concerned it is well proved and appeal so far as it relates to charge under Section 498-A / 34 of IPC has no force.

Accordingly, this appeal is partly allowed. The conviction and sentence of appellant under Section 306 / 34 of IPC are set aside. The appellant is acquitted from charge under Section 306 / 34 of IPC and conviction and sentence passed by the trial Court under Section 498-A / 34 of IPC are hereby confirmed. The fine amount of Rs.2,000/- if paid by him, may be refunded to him. The order of the trial Court in respect of disposal of property is hereby confirmed. The bail and bond produced by the appellant stand cancelled. The trial Court is directed to take him under custody and send him to custody for suffering remaining part of the sentence under Section 498-A / 34 of IPC.

C.C. as per rules.