

Jay Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-19-2012

Appellant : Jay Kumar

Respondent : The State of M.P.

Judgement :

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT, JABALPUR SINGLE BENCH PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA CRIMINAL APPEAL NO.2202/1996 Jay Kumar Vs. State of Madhya Pradesh For the appellant : Shri R. S. Patel, Advocate. For the respondent: Shri Ajay Tamrakar, Panel Lawyer

JUDGMENT

(Delivered on the 19th day of October, 2012) The appellant has preferred this appeal against the judgment dated 1.11.1996 passed by the learned First Additional Sessions Judge, Chhindwara in ST. No.5/1995 whereby the appellant was convicted for offence punishable under Section 304-B and 498-A of I.P.C and sentenced for rigorous imprisonment of seven years and three years respectively.

2. The prosecution's story, in short, is that Malukchand Kotwar (PW1) of Village Palatwada, Police Station Chourai, District Chhindwara was informed by the appellant that his wife Ranjana Bai had expired and her dead body is lying in a well. Malukchand went to the well and after looking at the dead body of 2 Criminal

Appeal No.2202 of 1996 Ranjana Bai, he went to the Police Station and lodged a merger intimation Ex.P/10. Police went to the spot and panchayatnama lash Ex.P/3 was prepared. The dead body of the deceased Ranjana Bai was sent for post mortem examination. Dr. M. L. Gupta (PW10) did the post mortem upon the body of the deceased Ranjana Bai and gave a report Ex.P/7. He found that there was no external injury on her body but her liver and spleen were found ruptured and therefore, she died. In investigation parents and relatives of the deceased had stated to the Police making so many allegations against the appellant that he demanded dowry. He dealt the deceased with cruelty and therefore, she committed suicide. After due investigation a charge sheet was filed before the JMFC, Amarwada who, committed the case to the Sessions Court Chhindwara and ultimately it was transferred to the First Additional Sessions Judge, Chhindwara.

3. The appellant Jay Kumar abjured his guilt. He took a specific plea that his wife was not in a fit mental condition and the appellant lodged an FIR against his father-in-law and therefore, parents and relatives of the deceased had falsely implicated the appellant. He kept his wife with comfort. However, no defence evidence was adduced.

4. The learned Additional Sessions Judge after considering the prosecution's evidence convicted the appellant for offence punishable under Section 304-B and 498-A of the I.P.C and sentenced as mentioned above. 3 Criminal Appeal No.2202
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5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that the prosecution failed to prove that the appellant ever demanded any dowry from anyone. There is a material contradiction between the evidence given by the various witnesses. The deceased was not fit by her mental condition. She was in habit to leave her house without any reason. Under such circumstances, the appellant cannot be convicted for offence punishable under Section 304-B of I.P.C. The appellant remained in the custody for more than 27 months and therefore, that would be a sufficient sentence for the appellant for offence punishable under Section 498-A of I.P.C,

where the appellant has faced the trial and appeal for last 17 years.

7. On the other hand the learned Panel Lawyer has submitted that the conviction as well as the sentence directed by the trial Court appears to be correct and there is no need to make any interference in the appeal.

8. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appeal filed by the appellant can be accepted ?. And whether the sentence directed against the appellant can be reduced ?.

9. According to the evidence given by Kotwar Malukchand the appellant himself informed the Kotwar that the dead body of his wife was lying in a well. Dr. M. L. Gupta (PW10) has proved 4 Criminal Appeal No.2202 of 1996 the post mortem report Ex.P/7 by which it is clear that the deceased died due to rupture of spleen and liver. It may be either an accidental or suicidal death but for offence punishable under Section 304-B of I.P.C, it is to be established that death of the wife was unnatural. Therefore, looking to the post mortem report given by Dr. Gupta, death of the deceased Ranjana Bai appears to be an unnatural death.

10. Babulal (PW4) father of the deceased and other relatives have made omnibus allegations about the dowry demand etc. There are three sets of allegations relating to the dowry demand. Firstly that the appellant was in habit to send the deceased to the house of her parents for demand of some money. Secondly, fifteen days prior her death she was sent to the house of her father to bring a sum of Rs.3000/- when her mother-in-law was also accompanying her and thirdly when Umesh Chand (PW5) went to send the deceased to the house of the appellant then the appellant demanded a sum of Rs.500/-. First of all if demand of Rs.3000/- is considered then Santosh Kumar Chauhan (PW3) , Babulal (PW4) and Umesh Chand (PW5) have stated that the deceased came to the house of her father Babulal and she told that the appellant had demanded a sum of Rs.3000/-. Santosh Kumar Chauhan has also stated that he was also working as a teacher and Babulal was known to him. He invited the deceased for a cup of tea and thereafter, she told him about that demand. However, Babulal the father of the deceased has accepted that there were 5 Criminal Appeal No.2202 of 1996 no

such intimate relations of him with the witness Santosh Kumar Chauhan so that his daughter could go to the house of Santosh Kumar Chauhan. Looking to the superficial relation of Babulal and Santosh Kumar Chauhan there was no possibility that deceased could tell such a fact to a person who was not having much intimacy to the deceased. It appears that being a colleague of Babulal, Santosh Kumar Chauhan was created as a witness without any basis. If case diary statement of Santosh Kumar Chauhan is perused then he did not mention to the Police that the deceased came to his house for a cup of tea or she told about any demand. Hence the evidence given by Santosh Kumar Chauhan appears to be an after thought which cannot be believed.

11. According to Santosh Kumar Chauhan, the appellant demanded a sum of Rs.3000/- whereas according to the witness Babulal the appellant demanded a sum of Rs.2000/- whereas, Umesh Chand has stated that there was a demand of either Rs.2000/- or Rs.3,000/- but, if the case diary statements of these witnesses are perused then it would be clear that they did not state before the Police about that demand told by the deceased 15 days prior to her death and therefore, a demand of Rs.3000/- as told by the witnesses appears to be an after thought.

12. Umesh Chand has stated that when he went to the house of the appellant along with his sister Ranjana Bai then the appellant assaulted the deceased Ranjana Bai with the pretext that why she left his house without any intimation and thereafter, 6 Criminal Appeal No.2202 of 1996 he asked for a sum of Rs.500/- from her brother Umesh Chand. On the other hand Umesh Chand has stated in his case diary statement Ex.D/3 that a sum of Rs.500/- was demanded from him when he went to the house of the appellant to bring his sister to his house. This is a material contradiction between the evidence given by the witness Umesh Chand and his case diary statement. It is important to consider that Umesh Chand was a student who, stated before the Court that he could not arrange for money and therefore, he could not pay a sum of Rs.500/-. Being a student there was no earning to the witness Umesh Chand and therefore, if any sum was demanded from the witness Umesh Chand then it was for him to inform his father about the demand and to arrange for payment if he had desired to do so but, such allegation made by witness Umesh Chand is no where confirmed by his father Babulal.

Under such circumstances, it appears that the witness Umesh Chand is telling a falsehood on his own and his evidence cannot be believed that a sum of Rs.500/- was demanded by the appellant from him.

13. Babulal (PW4), Umesh Chand (PW5), Shashi Bai (PW6) and Kamla Bai(PW7) have stated that Ranjana Bai was being habitually sent by the appellant to her parents house for demand of some money. Shashi Bai and Kamla Bai cooked a new story that the appellant was sending Ranjana Bai to her parents house, for demand of grains also but, Babulal the father of the deceased did not confirm the demand of any grain from the side of the 7 Criminal Appeal No.2202 of 1996 appellant. Such a demand as shown by the witnesses appears to be incorrect. Santosh Kumar Chauhan has accepted in his statement that the appellant had constructed his own house. If the appellant was sending his wife to her parents house for demand of small sums and if he was in such a poor condition then he could not construct his own house. Demand of such a small amount of Rs.500/- to Rs.2000/- appears to be incorrect. Looking to the fact that the appellant where he has constructed his own house, it appears that allegation of demand is not correct.

14. The witnesses who alleged omnibus allegations of the demand have stated that in October 1992 when a delivery was due to the deceased she was assaulted and ousted from the house of the appellant and therefore, she went to the house of her father and Babulal had lodged an FIR at Police Station Chourai. Babulal has stated specifically that the appellant was not ready to bear the expenditure of the delivery of the deceased Ranjana Bai. But according to the witness Kamla Bai (PW7) the deceased had two daughters and one son and therefore, three deliveries took place to her. Babulal tells about only one delivery. He does not say about other two deliveries. However, if the appellant was not interested to bear the expenses of the delivery of a child of the deceased then why he did not send the deceased to her parents house for remaining two deliveries. If Babulal had lodged an FIR at Police Station Chourai then why such FIR was not submitted in the present case. Copy of the FIR could be obtained from the 8 Criminal Appeal No.2202 of 1996 Police Station Chourai itself and it can be annexed with the charge sheet. No such copy of FIR has been filed by the prosecution and therefore, it appears that no such FIR was lodged by the witness Babulal and a

false story has been cooked by the witnesses.

15. Looking at the material contradiction between the evidence of the various witnesses Babulal, Umesh Chand, Shashi Bai and Kamla Bai it appears that the appellant neither demanded for grains nor for any money. There is no allegation that he was demanding some articles like TV, Fan, Refrigerator etc. The material contradictions between the evidence of the various witnesses clearly indicate that the witnesses have cooked the allegations of demand whereas, there was no demand from the side of the appellant. The prosecution could not prove beyond doubt that there was any demand of the appellant for dowry either in cash or kind or he did any cruelty with the deceased for demand of that dowry. The appellant could not be convicted for the offence punishable under section 304-B of I.P.C. The learned Additional Sessions Judge has erred in convicting the appellant for offence punishable under Section 304-B of I.P.C.

16. So far as the conviction under section 498-A of I.P.C is concerned, it may be considered that Babulal, Umesh Chand, Shashi Bai and Kamla Bai had given their case diary statements next day after recovery of the dead body. They have stated that the appellant was in habit to assault the deceased on and often. He was torturing the deceased and also making allegations that 9 Criminal Appeal No.2202 of 1996 she was not mentally fit. Dayali (PW2) has stated that the deceased took one girl child from his house six months prior to her death and with great difficulty that child was returned and the appellant told him that the mental condition of his wife was not good. However, no any medical certificate or treatment papers were submitted before the Court in defence. Therefore, it cannot be said that the mental condition of the deceased was not good. It is clear from the missing report Rojnamcha dated 16.10.1994 that the appellant lodged an information in the Police Station, Chourai that the deceased left her children in the house and went to her parents house. The questions asked to various witnesses indicates that the defence of the appellant was that the deceased was in habit to leave his house and to visit her parents house on and often without any reason. It is apparent that marriage of the deceased and the appellant took place in the year 1990 and she died in the month of December, 1994 and therefore, in the span of four years the deceased was blessed with three children. The attitude of the

appellant is visible that if the deceased was not mentally fit then it was not possible for her to carry three children in a short span of four years. It is established that she was leaving the house of her husband on and often and took shelter in the house of her father. Looking at the conduct of the deceased, it appears that the appellant dealt her with cruelty and she was not comfortable in her husband's house.

17. It is true that the father of the deceased Babulal did No.10 Criminal Appeal No.2202 of 1996 try to redress her grievances by calling any Panchayat of the caste fellows or villagers. He could not prove the FIR lodged by him about the cruelty done by the appellant, but looking to the conduct of the deceased and evidence given by these four witnesses, it is apparent that the deceased was not comfortable in the house of the appellant. He dealt her with cruelty. It is not proved beyond doubt that the death of the deceased was a suicidal one or soon before her death she was dealt with some cruelty but, it is apparent that she was forced to leave her husband's house leaving her children in the house and therefore, her harassment can be properly imagined. Under such circumstances, offence under Section 498-A of I.P.C is constituted against the appellant. The learned Additional Sessions Judge has correctly convicted the appellant for offence punishable under Section 498-A of I.P.C.

18. So far as the sentence is concerned it is apparent that the appellant remained in the custody for 691 days during the trial. Thereafter, he remained in the jail for some time during the appeal and thereafter, his custody period appears to be above 20 months. If offence committed by the appellant under Section 498- A of I.P.C is considered then it is apparent that the appellant remained in the custody of 20 months. He has faced the trial and appeal for last 17 years and ultimately he lost his wife. He has to maintain his three children. Under such circumstances, the period for which he remained in the custody appears to be the sufficient jail sentence against the appellant. 11 Criminal Appeal No.2202 o

19. On the basis of the aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction as well as the sentence directed for offence punishable under Section 304-B of I.P.C is hereby set aside. He is acquitted from

that charge. However, the conviction directed for offence punishable under section 498-A of I.P.C is hereby maintained but, the sentence is reduced to the period which the appellant has already undergone in the custody.

20. At present the appellant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

21. The copy of the judgment be sent to the trial Court along with its record for information. (N.K.GUPTA) JUDGE 19 10.2012 bina

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