

Prakash Raikwar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : May-14-2013

Appellant : Prakash Raikwar

Respondent : The State of M.P.

Judgement :

(1) Cr.A.No.1016/1998 HIGH COURT OF MADHYA PRADESH:JABALPUR SINGLE BENCH PRESENT: HON'BLE SHRI JUSTICE RAKESH SAKSENA CRIMINAL APPEAL No.1016/1998 Prakash Raikwar son of Ramcharan Raikwar, aged 28 years, labourer, resident of Agra Mohalla, Panna, P.S. Tahsil and District Panna, M.P.Appellant Versus State of Madhya PradeshRespondent

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the appellant: Shri Siddharth Datt, Advocate. For the respondent: Shri Umesh
Pandey, Govt. Advocate.

JUDGMENT

(14.05.2013) Appellant has filed this appeal against the judgment dated 16.04.1998 passed by Additional Sessions Judge, Panna in Sessions Trial No.19/94 convicting the appellant under section 498-A of the Indian Penal Code and sentencing him to rigorous imprisonment for two years with fine of Rs.4000/-. In default of payment of fine further rigorous imprisonment for 6 months.

2. Appellant was tried under sections 302 and 498-A of the Indian Penal Code for committing murder of his wife Dulari Bai by setting her on fire after pouring kerosene. Learned Additional Sessions Judge, finding the evidence insufficient for bringing home the charge under section 302 I.P.C., acquitted him of that charge, (2) Cr.A.No.1016/1998 however, on the basis of evidence on record, convicted him under section 498-A of the Indian Penal Code and sentenced him as mentioned above.

3. In short, the prosecution case is that on 16.2.1994 at about 11:00 a.m. when appellant's wife Dulari Bai was cooking food, he poured kerosene and set fire to her. Injured Dulari Bai was taken to hospital where Dr.O.P.Morya examined her injuries. It is said that while Dulari Bai was in hospital her dying declaration Ex.P/20 was recorded by Executive Magistrate D.S.Kawar (PW-13). She disclosed in the dying declaration that because of quarrel between her and her husband, at about 10 o'clock in the morning, her husband ignited her by a burning wood taking out from the Chullah. She caught fire and burnt. Her husband ran away. When she went out of the room, her aunt-in-law extinguished the fire by pouring water. She also stated that in the past, her husband did not give her money for her expenses. On the same day at about 6:20 p.m. Dulari Bai died.

4. Dr. O.P.Morya (PW-3), who examined the injuries of Dulari Bai, and also conducted her postmortem examination, stated that there were about 80% burn injuries on the body of deceased and the smell of kerosene was emanating from her body. After investigation, charge sheet was filed and the case was committed for trial.

5. Learned trial Judge after appreciating the evidence of Savitri Bai (PW-1), Kishori Bai (PW-2) and the evidence of dying (3) Cr.A.No.1016/1998 declaration Ex.P/20 came to conclusion that it was not established that appellant caused the death of Dulari Bai by igniting her. Though doctor stated that smell of kerosene was emanating from her body but this fact was inconsistent to the facts narrated by Dulari Bai in her dying declaration Ex.P/20 that fire was set by igniting her by burning wood. Learned trial Judge, however, convicted the appellant under section 498-A I.P.C. on the basis of evidence of Hirabai (PW-10), the mother of deceased,

who deposed that appellant did not give money to deceased whenever she demanded. This fact was also disclosed by deceased in her dying declaration Ex.P/20. Though dying declaration Ex.P/20 made by deceased was disbelieved by the trial Judge on the ground that it did not establish that appellant committed murder of deceased or that she committed suicide, but since it was established that appellant subjected deceased to cruelty by not giving her money for meeting her expenses, a charge under section 498-A I.P.C. stood proved.

6. After once again appreciating the evidence of Hirabai (PW-10) and the evidence of dying declaration Ex.P/20, I am of the view that learned trial Judge committed no error in holding the appellant guilty under section 498-A I.P.C. Conviction of appellant under section 498-A I.P.C. is, therefore, affirmed.

7. Learned counsel for the appellant next submitted that in the facts and circumstances of the case, the sentence of rigorous imprisonment for 2 years awarded to appellant was harsh. He (4) Cr.A.No.1016/1998 submitted that the incident in question occurred in the year 1994, since then more than 18 years have elapsed. Now, no useful purpose would be served if the appellant is sent to jail for serving out his sentence of imprisonment.

8. It is true that incident in question had occurred in the year 1994. The accusation against the appellant that he caused death of his wife has not been found proved by the trial Court. The only piece of evidence on the basis of which appellant has been convicted under section 498-A I.P.C. is that he did not give money to deceased for meeting her expenses. There appears no evidence to indicate that any serious kind of cruelty was meted out to deceased. Of course, the conduct of appellant was in the nature of harassment to the deceased. In these circumstances, I am of the opinion that the purpose would be served if the jail sentence of appellant is reduced to period of sentence already undergone by him, which from the record comes out to be 5 months and 3 days.

9. In the result, appeal is partly allowed. Conviction of appeal under section 498-A I.P.C. is affirmed. However, his sentence of rigorous imprisonment for 2 years awarded by the trial Court is reduced to period of sentence already undergone by him. His sentence of fine is affirmed. (RAKESH SAKSENA) JUDGE b (5)

Cr.A.No.1016/1998

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