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Abid Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-30-2012

Appellant : Abid

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Vikas Sharma

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH : HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.1778/2009 Abid VERSUS State of Madhya Pradesh ---------- Shri Vikas Sharma, counsel for the appellant. Shri Puneet Shroti, Panel Lawyer for the State/respondent. ----------

JUDGMENT

(Delivered on the 30th day of October, 2012) The appellant has preferred this appeal against the judgment dated 10.9.2009 passed by the learned Additional Sessions Judge, Amarwada, District Chhindwara in S.T.No.18/2008, whereby the appellant was convicted for the offence punishable under section 304-B and 498-A of IPC and sentenced for 7 years' rigorous imprisonment for the offence punishable under section 304-B of IPC, whereas no separate sentence was directed for the offence punishable under section 498-A of IPC.

2. The prosecution's case, in short, is that, on 29.10.2007, Peer Ali (P.W.2) has lodged a merg intimation at Police Station Amarwada, District Chhindwara that his sister -:- 2 -:- Criminal Appeal No.1778 of 2009 Shabana, who was married with the appellant was found sick and therefore, she was taken to Amarwada by a tractor. Since the deceased Shabana expired during the transit, therefore, the tractor was returned back to the house of the appellant. The appellant informed his mother-in-law Gulshan Bee (P.W.11) that the deceased had consumed some poison. In the inquest, a Panchayatnama lash, Ex.P/4 was prepared and dead body of the deceased was sent for the post-mortem. Dr.Sadhna Patel (P.W.1) along with Dr. Sudhir Kumar Shukla did the post-mortem upon the body of the deceased Shabana and gave a report, Ex.P/1. It was found that the deceased died due to consumption of some poisonous substance and therefore, viscera of the deceased was preserved. Viscera was handed over to the concerned constable for its forensic science analysis in a sealed position. Her vaginal swab was also taken on a slide. Forensic Science Laboratory in its report, Ex.P/18 found that in viscera of the deceased, Celphos was found and in her slide of vaginal swab, semen particles were found. When the parents and relatives of the deceased were examined by the police, they alleged against the appellant about dowry demand and harassment. A case for the offence punishable under section 304-B of IPC was registered by the police. After due investigation, a charge-sheet was filed before the -:- 3 -:- Criminal Appeal No.1778 of 2009 JMFC, Amarwada who committed the case to the Sessions Court, Chhindwara and ultimately, it was transferred to the Additional Sessions Judge, Amarwada, District Chhindwara.

3. The appellant abjured his guilt. He did not take any specific plea in the case but, he has stated that he was falsely implicated in the matter. He kept his wife with comfort. Since he made physical relations with his wife in the previous night, therefore, semen particles were found in her vaginal swab. It was also submitted by the appellant that his wife was suffering from some kidney problem and she died due to that disease. Documents, Ex.D/3 and Ex.D/5 to Ex.D/7 were submitted to explain about the treatment of the deceased. The appellant examined himself as a defence witness.

4. The learned Additional Sessions Judge, after considering the evidence adduced by the parties, convicted the appellant for the offence punishable under sections 304- B and 498-A of IPC and sentenced him as mentioned above.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that in the merg intimation lodged by Peer Ali, brother of the deceased, he did not make any allegation against the appellant. The deceased had stone problem in her kidney. Since, she was pregnant, therefore due to weight -:- 4 -:- Criminal Appeal No.1778 of 2009 of the foetus, she was feeling abdominal pain due to renal problem and ultimately, she died. The appellant never demanded any amount from either the deceased or her parents. On the contrary, it was alleged that the appellant gave a sum of Rs.12,000/- to one Rehmat Ali, brother of the deceased to purchase some cattle and Rehmat Ali did not return that money to the appellant. The trial Court has erred in convicting the appellant for the offence punishable under section 304-B of IPC. It is also submitted that Dr.Sadhna Patel could not give any specific reason about the death of the deceased. In the alternate, it is submitted that the appellant is in custody since 2.11.2007 and therefore, his sentence may be reduced to the period, which he has already undergone in the custody.

7. On the other hand, the learned Panel Lawyer has submitted that the conviction and sentence directed by the trial Court appears to be correct.

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?. -:- 5 -:- Criminal Appeal No.1778 o

9. It is submitted by the learned counsel for the appellant that the deceased died due to some disease. However, Dr.Sadhna Patel (P.W.1) found some symptoms of administration of poison on the body of the deceased. However, she could not give the actual reason about her death. She found a pregnancy of 8 to 10 weeks to the deceased and ultimately, her viscera was preserved. Report of forensic

science laboratory, Ex.P/18 was produced before the trial Court and questions were asked to the appellant about that report. In that report, it is apparent that viscera of the deceased contained a poison di-mithoate (organo phosphorous = Celphos). Looking at the report of forensic science laboratory, it is apparent that the deceased was administered with some poison, which is commonly known as Celphos and therefore, it cannot be said that the death of the deceased was natural.

10. Peer Ali (P.W.2), brother of the deceased, Ishteyaq (P.W.5), father of the deceased, Mohd. Makaial (P.W.8) and Gulshan Bee (P.W.11), mother of the deceased were examined to tell about the fact of dowry demand and harassment. They have stated that the appellant was demanding one motorcycle and a buffalo from the deceased and therefore, he was habitually beating the deceased, because his demand was not fulfilled. In the present case, -:- 6 -:- Criminal Appeal No.1778 of 2009 there is a peculiar circumstance that the appellant was residing five houses away from the house of parents of the deceased, at village Chargawn. Gulshan Bee (P.W.11) has accepted in para 4 of her evidence that there were only 4-5 houses in between the house of the appellant and her house.

11. When the parents of the deceased and the appellant were residing not only in the same village but also in the same locality then, it was not possible for the appellant to harass the deceased in such a manner, so that she could commit suicide. There is no allegation that some poison was administered by the appellant himself. It is admitted that the marriage of the deceased Shabana took place with the appellant on 22.4.2004 and therefore, she died after three and half years of her marriage. Kotwar Raghuveer (P.W.4) was examined for various documents like Ex.P/1 and Ex.P/11 but, in his cross-examination, he has submitted that he had opportunities to talk with the deceased Shabana and Shabana never told anything about such harassment or dowry demand. Similarly, the appellant Abid (D.W.1) has examined himself, who has claimed that he kept the deceased with comfort and she died due to renal consequences. Abid denied that he was demanding for a buffalo or a motorcycle from the deceased or he was in a habit to do cruelty with the deceased. He has admitted the -:- 7 -:- Criminal Appeal No.1778 of 2009 list of articles which were given to his wife and him at the time of

marriage but, he has stated that he never demanded such articles at the time of marriage. It is true that the appellant and his wife were Muslim by the religion and therefore, it was for the appellant to declare the Meher for the deceased. In general, in such a community, there is no any custom for demanding dowry etc.

12. Mohd. Makaial (P.W.8) did not tell about her relations with the deceased in her examination-in-chief but, in the cross-examination, he has admitted that he was the real uncle of the deceased. When the deceased and her husband visited her house in September, 2007, the deceased told about the demand of the appellant. Mohd. Makaial has admitted that the appellant had some land for agriculture and he had cows, buffaloes and bullocks. He could not tell about the fact that the appellant had any motorcycle or not. He has stated that he advised the appellant not to do such a thing. The statement given by the witness Mohd. Makaial appears to be unnatural. When the deceased had her parents house, 4-5 houses away from her husband's house then, she could tell about such a demand and torcher to her parents for so many times in a day. There was no need to the deceased to tell such a story to her uncle in her visit to the house of her uncle along with her husband. If her -:- 8 -:- Criminal Appeal No.1778 of 2009 parents could not resolve the dispute of the deceased and the appellant then, how the uncle of the deceased could resolve such a quarrel between them. It appears that Mohd. Makaial has stated about the event without any basis. If the deceased and the appellant went to the house of Mohd. Makaial and told about their problem then, it was for Mohd. Makaial to inform about the situation to his brother Ishteyaq (P.W.5) and Ishteyaq must have told this fact to the police in his case diary statement but, neither Peer Ali not Ishteyaq told about that fact and therefore, it appears that story cooked by Mohd. Makaial is not correct.

13. Peer Ali, Ishteyaq and Gulshan Bee have stated that the deceased was kept with comfort for 4-5 months and thereafter, the appellant had habitually assaulted the deceased. Peer Ali has stated that the appellant assaulted his sister for 4-5 times in front of him. One day prior to the death of the deceased, Peer Ali was going towards the river. He heard the cries of his sister and therefore, he went to the house of the appellant and he saw that the appellant was assaulting his sister. Peer Ali tried to convince the appellant but, the appellant demanded for a

motorcycle and a buffalo from him. However, no such version has been given by this witness in his case diary statement, Ex.D/1, which indicates that he was telling a falsehood of the incident, which took -:- 9 -:- Criminal Appeal No.1778 of 2009 place one day prior to the death of the deceased. Peer Ali is a youth of 21 years of age and it appears that he is not an independent earner, therefore, it was for him to inform his parents about the incident, which took place one day prior to the death of the deceased but, neither Ishteyaq, not Gulshan Bee has confirmed about such an incident, which took place one day prior to the death of the deceased. Under such circumstances, it is apparent that the witnesses are exaggerating the facts unnecessarily.

14. The witness Ishteyaq, father of the deceased has stated that the appellant was giving threat that he would take divorce from the deceased but, such fact was not mentioned by him in his case diary statement, Ex.D/2. A fixed date or period could not be informed by any of these witnesses about the dowry demand and consequential harassment. The witnesses Peer Ali, Ishteyaq and Gulshan Bee were suggested that a sum of Rs.12,000/- was given by the appellant to Rehmat Ali, brother of the deceased but, none of the witnesses has accepted that suggestion. It is strange that the appellant Abid examined himself as a defence witness but, he did not state in his examination-in- chief that he gave a sum of Rs.12,000/- to Rehmat Ali. No receipt of that payment was submitted before the trial Court -:- 10 -:- Criminal Appeal No.1778 of 2009 and therefore, suggestion given by the appellant to the witnesses appears to be incorrect.

15. Ishteyaq and Gulshan Bee has shown that they had no knowledge to the fact as to whether the appellant had any motorcycle or not. Since the appellant was residing 4 houses away from the house of these witnesses then, they must have knowledge that the appellant had any motorcycle or not and if the appellant did not have any motorcycle then, a specific denial was to be given by these witnesses but, in place of giving any specific denial, they shown their ignorance to the fact that the appellant had any motorcycle or not, whereas the witness Mohd. Makaial has accepted that the appellant had cows, buffaloes and bullocks. Under such circumstances, looking to the hesitation of these witnesses Ishteyaq and Gulshan Bee, it appears that the appellant had a motorcycle with him and therefore, these

witnesses could not deny specifically about that motorcycle.

16. On the basis of the evidence given by these 3-4 witnesses, it appears that the appellant had a motorcycle and buffaloes etc. and therefore, there was no possibility of any dowry demand from his side to the deceased. If the deceased had any problem of dowry demand and cruelty on the basis of the dowry demand then, she was residing 4 houses away from the house of her parents and there was no -:- 11 -:- Criminal Appeal No.1778 of 2009 problem to her, to visit her parents' house and to tell them about her difficulty. She was in a position that she could show her wounds after each assault to her parents and her parents Ishteyaq and Gulshan Bee could arrange a Panchayat of their community, so that the appellant could be set right but, there is no instance quoted when the parents of the deceased tried to call a Panchayat of the community or to lodge an FIR against the appellant. Under such circumstances, the allegations made by these witnesses appears to be fictitious. It appears that the deceased died within three and half years of her marriage and she had no living child at the time of her marriage therefore, allegations were made by these witnesses due to anger. Small things were shown in exaggerated manner against the appellant because of the annoyance. However, since no FIR was lodged in the last three and half years or no Panchayat was called by the parents of the deceased and the appellant had a motorcycle, cows, buffaloes and bullocks of his own then, the fact relating to dowry demand appears to be incorrect and it cannot be accepted. Consequently, the appellant could not be convicted for the offence punishable under section 304-B of IPC.

17. The learned counsel for the appellant has placed his reliance upon the judgment passed by Hon'ble the Apex -:- 12 -:- Criminal Appeal No.1778 of 2009 Court in case of Harjeet Singh Vs. State of Punjab. [(2006) M.P.W.N. Note 125]., to show that presumption under section 113-B of Evidence Act may be operated if prosecution is able to establish the circumstances set out in section 304-B of IPC that cruelty or harassment was proved soon before her death along with other ingredients. In the present case, the prosecution could not prove beyond doubt that there was demand of dowry from the deceased or her parents and it is no where established that soon before her death, she was dealt with cruelty or

harassment and therefore, in the light of the judgment passed by Hon'ble the Apex Court in case of Harjeet Singh (supra) presumption under section 113-B of the Evidence Act cannot be applied in the present case and the appellant cannot be convicted for the offence punishable under section 304-B of the IPC.

18. It is true that the witnesses have exaggerated the story but, no instance has been proved by the prosecution, soon before the death of the deceased, so that it could be said that the deceased committed suicide due to harassment done by the appellant. On the contrary, in FSL report, semen particles were found in the vaginal swab of the prosecutrix and the appellant has stated that he made physical relations with the deceased in the previous night. Under such circumstances, it cannot be said that the -:- 13 -:- Criminal Appeal No.1778 of 2009 deceased committed suicide due to any harassment done by the appellant. Hence, the appellant could not be convicted for the offence punishable under section 306 of IPC even.

19. It is true that the witnesses have stated in an exaggerated form but, it cannot be said that their statements were baseless. If the deceased was kept with comfort by the appellant then, there was no need to the parents of the deceased to make any allegation against the appellant, who was residing in the same locality. The appellant tried to prove that the deceased was suffering from some renal problem but, no doctor was examined to show that her renal problem was so acute, so that she could commit suicide because of unbearable pain. Since, it is observed that the death of the deceased was not a natural death therefore, by renal problem to the deceased, nothing has been proved in favour of the appellant.

20. According to the witnesses, the appellant was habitually assaulting the deceased. The death of the deceased was unnatural and probably it was a suicide and therefore, testimony of the witnesses can be accepted up to that extent that the appellant did cruelty with the deceased and the parents of the deceased could not interfere in the matter boldly because there was a possibility that the appellant could give a divorce to the deceased and in such a -:- 14 -:- Criminal Appeal No.1778 of 2009 case, it would be very difficult for the parents of the deceased to maintain the deceased. Under such circumstances, evidence given by the parents

and relatives of the deceased is acceptable up to that extent that the appellant dealt the deceased with cruelty. Under such circumstances, the learned Additional Sessions Judge has rightly convicted the appellant for the offence punishable under section 498-A of IPC.

21. So far as the sentence is concerned, the appellant is in custody since 2.11.2007 i.e. for more than 4 years. That period appears to be more than sufficient for the punishment of offence punishable under section 498-A of IPC and therefore, it would be proper to reduce the sentence of the appellant to the period, which he has already undergone in the custody.

22. On the basis of the aforesaid discussion, the appeal filed by the appellant can be partly accepted and therefore, it is hereby partly allowed. The conviction as well as the sentence directed by the trial Court for the offence punishable under section 304-B of IPC is hereby set aside. The appellant is acquitted from the charge of offence punishable under section 304-B of IPC. However, the conviction for the offence punishable under section 498-A of -:- 15 -:- Criminal Appeal No.1778 of 2009 IPC is hereby maintained but, the sentence is reduced to the period, which he has already undergone in the custody.

23. At present, the appellant is in jail and therefore, Registry is directed to issue a supersession warrant, so that the appellant may be released forthwith.

24. A copy of the judgment be sent to the trial Court alongwith its record for information. (N.K.GUPTA) JUDGE 30 10/2012 Pushpendra

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