

**Vijay Vs. State of Maharashtra**

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**Court :** Mumbai Nagpur

**Decided On :** Jul-31-2014

**Judge :** M.L. Tahaliyani

**Appeal No. :** Criminal Appeal No. 287 of 1999

**Appellant :** Vijay

**Respondent :** State of Maharashtra

**Judgement :**

Oral Judgment:

1. The appellant has been convicted for the offences punishable under Sections 498-A and 306 of the Indian Penal Code by the learned Additional Sessions Judge, Nagpur. He has been sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- for the former offence and rigorous imprisonment for seven years and to pay a fine of Rs.5000/- for the latter offence. Both the sentences were directed to run concurrently.

2. The case of the prosecution before the trial Court was that the deceased Meena was married to the appellant about 6 to 7 years prior to the date of incident. For a few initial years the marriage was peaceful and later on the appellant allegedly started demanding money. It is alleged that the appellant was given Rs.18,000/- by mother of the deceased and one Mangalsutra was also given to the deceased by her mother.

3. The incident in question had occurred on 04-5-1996 at about 3-00 a.m. at the house of the deceased and the appellant. The deceased made enquiries with the appellant as to why did he not bring clothes for his children. The appellant got agitated and inflicted few slaps on the deceased. The deceased got humiliated and she decided to put an end her life. She picked a kerosene can, went to bathroom, poured kerosene on herself and set herself on fire. She was removed to hospital and died on the same day. The cause of death as stated in the Post-Mortem Report is shock due to burns. During the course of treatment of the deceased in the hospital, two dying declarations were recorded by the police. The statements of mother and brother of the deceased were also recorded. After completion of investigation, the charge-sheet had been filed against the appellant for the above stated two offences.

4. A charge vide Exhibit 6 was framed by the learned trial Judge against the appellant. He pleaded not guilty to the charge vide Exhibit 7.

5. The prosecution had examined seven witnesses in support of its case. P.W.1-Baban Rangari was brother of the deceased, P.W.2-Bhimabai Rangari was her mother, P.W.3-Bhaurao Landge is Police Constable, who received information regarding the incident and recorded first dying declaration of the deceased, P.W.4-Chabirao Sonwane is Police Sub-Inspector, who had recorded statements of P.W.1 and P.W.2, P.W.5 is Police Sub-Inspector Pradeep Solunke, who had recorded the dying declaration of the deceased at the hospital, P.W.6-Hiralal Patil is the Police Officer, who prepared inquest panchanama and P.W.7-Dr. Mangesh Vaidya is the Medical Officer, who gave certificate regarding mental and physical health of the deceased before her dying declarations were recorded.

6. The learned trial Judge after examining evidence of all the witnesses had come to the conclusion that the appellant was guilty of the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

7. The learned Counsel Shri R.M. Daga has invited my attention to the evidence of P.W.1 and two dying declarations. It is submitted by him that there was no cruelty on the part of the appellant and that the allegations made against the appellant did not constitute abetment. It is submitted by learned Counsel Shri R.M. Daga that as

such, in fact, the respondent could not prove any of the charges against the appellant. The learned Counsel, therefore, wanted the order of the trial Court to be set aside.

8. The learned Additional Public Prosecutor Shri P.V. Bhojar has submitted that the allegations made in the dying declarations constitute cruelty and they are sufficient to come to the conclusion that the appellant had instigated the deceased to commit suicide.

9. I have evaluated the evidence of prosecution witnesses. Though P.W.1 has stated that Rs.18,000/- were given to the appellant by P.W.2, it can be seen that the amount was given for construction of house and not by way of dowry. Moreover, this part of evidence was not there in the police statement of this witness. A serious prejudice has been caused to the appellant when the prosecution had chosen not to examine the police officer who had recorded statements of P.W.1 and P.W.2. As such the infirmity in the evidence of P.W.1 is two fold - (1) the amount was not given by way of dowry, and (2) there is omission in the previous statement regarding Rs.18,000/-.

10. P.W.2 has admitted in her cross-examination that her statement was not recorded by the police and that she had not stated before the police that the deceased had told her that she was beaten mercilessly by the appellant and that the appellant was responsible for her death.

11. Learned Counsel for the appellant takes me through dying declarations of the deceased recorded by P.W.3 and P.W.5. P.W.3 in his evidence has stated that the deceased had told him that she had enquired from her husband as to why did he not bring the clothes for children. Thereafter she went to bed. She got early hours of the day may be around 3-00 a.m. and started crying. The appellant got furious and he gave one or two slaps. The deceased, therefore, poured kerosene on herself and set herself on fire. The evidence of P.W.5 is also more or less similar to the evidence of P.W.3.

12. The learned Counsel Shri R.M. Daga has not challenged the evidence of P.W.7. It is submitted by learned Counsel Shri R.M. Daga that even if the whole

evidence of P.W.3 and P.W.5 is taken to be true and correct, it does not in any manner make out a case under Sections 498-A and 306 of the Indian Penal Code. I agree with learned Counsel Shri R.M. Daga inasmuch as there are no allegations of dowry against the appellant. The appellant had demanded money for construction of house and Mangalsutra was allegedly given by P.W.2 to the deceased. As already stated, major portion of the evidence of P.W.1 is found missing in the previous statement of P.W.1. P.W.2 has made admission that there was no cruelty on the part of the appellant. The dying declarations indicate that it was the state of mind of the deceased which drove her to commit suicide. No active or passive role was played by the appellant, which could be said to be a cause of instigation and which led to committal of suicide by the deceased. In the circumstances, I pass the following order.

The appeal is allowed.

The judgment and order passed by the learned Additional Sessions Judge, Nagpur in Sessions Trial No.479 of 1996 on 21-9-1999 is set aside.

The appellant is acquitted of the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

His bail bond shall stand cancelled.

Fine, if any, paid by the appellant shall be refunded to him.

The appeal is accordingly disposed of.

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