

State Vs. Prem Chand and Others

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Court : Delhi

Decided On : May-27-2016

Judge : G.S. Sistani & The Honourable Ms. Justice Sangita Dhingra Sehgal

Appeal No. : CRL. A. No. 376 of 2000

Appellant : State

Respondent : Prem Chand and Others

Judgement :

G.S. Sistani, J.

Oral:

1. Present appeal has been filed by the appellant/State under Section 378 (1) of the Code of Criminal Procedure (in short 'Cr.P.C.) against judgment dated 07.12.1999 passed by learned Additional Sessions Judge, thereby acquitting the respondents in case FIR No.33/90 registered under Section 498-A/307/34 of the Indian Penal Code at Police Station Anand Parbat.

2. At the outset, we may notice that respondent No.1 is the husband of the victim, respondent No.2 is the brother-in-law (Jeth) of the victim and respondent No.3 is the sister-in-law (Jethani) of the victim.

3. It may be noticed that on 26.05.2016 a statement was made by the victim before the Court that since the year 2010 she has been residing with her husband (respondent no.1) and her children. The victim had also made a statement that all the disputes and differences between the parties stand resolved. We had adjourned the matter for today and directed the children of the victim to remain present in Court.

4. Respondents, victim and children of respondent no.1 and victim are present in Court. The children submitted that their parents (respondent no.1 and victim) are residing together since the year 2010 as a happy family.

5. At the joint request of the parties, we have taken up the appeal for final hearing.

6. The case of the prosecution, as noticed by the trial court is as under:-

"Accused Prem Chand @ Pappu is husband of Geeta (herein after referred to as injured), whereas Tej Singh and Kamlesh are Jeth (husband s brother) and Jethani (hub and s brother s wife) of injured. Injured was admitted by her husband in Bali Nursing Home on 17.02.1990 at 9:00 PM in injured condition. Injured received head injury and suffered fracture of right/forearm bones. While injured was admitted in Bali Nursing Home, she was unconscious. It was stated by the husband of injured in Nursing home that injured received injury by falling from 12th stair at 8:00 PM. Information regarding injuries suffered by the injured was sent to the parents of injured by accused persons through Gopi, son of accused Tej Singh. On receipt of this information, parents of injured reached the house of accused persons and came to know that their daughter was hospitalized in Bali Nursing Home. Parents of injured also reached Bali Nursing Home. Brother of injured also reached there. Parents and brother of injured were not satisfied from the medical treatment provided to injured in Bali Nursing Home. They insisted that injured be shifted to RML hospital, accordingly, injured was shifted to RML hospital. D. Ct. Jawant Singh of RML hospital sent information to PS Anand Parvat through telephone regarding hospitalization of injured in RML hospital, pursuant whereof DD No. 2A was recorded and handed over to ASI Rampat for investigation, who along with HC Suraj Mal, in Government vehicle, reached RML hospital."

7. To substantiate the accusations, prosecution examined fifteen witnesses in all. Statements of the respondents were recorded under Section 313 of Cr.P.C. wherein they claimed to be innocent and denied all the prosecution charges. However, no evidence was led by the respondents in their defence.

8. It may be noticed that the learned Trial Court after considering the arguments addressed by the counsel for the parties and evidence adduced by them, acquitted the respondents by concluding that the prosecution had failed to prove the guilt of the respondents beyond reasonable doubt.

9. Ms. Aashaa Tiwari, learned counsel for the State, submits that the Trial Court disregarded and failed to take into account the relevant material available on record and has based its findings on mere conjectures and surmises. Counsel further submits that the Trial Court has committed a serious error in discarding the cogent, credible and trustworthy testimonies of PW1, i.e. the victim, as also her parents.

10. Counsel for the State further urges that the Learned Trial court has erred in not relying on the testimony of the victim as a victim stands at higher footing than any other witness. Counsel also contends that the victim was initially being harassed for demand of dowry. The testimony of the victim would leave no room for doubt that she was beaten by the respondents and the injuries sustained by her were on account of the beatings which were inflicted on her by a danda and also thapi (stick used for washing clothes). It is further submitted that the victim was first admitted to Bali Nursing Home on 17.02.1990 at 9.00 p.m. on account of a head injury and fracture of right forearm. Thereafter victim was admitted to Ram Manohar Lohia Hospital from where she was discharged on 06.03.1990. The victim was again admitted to Rana Nursing Home on 06.03.1990 upto 13.03.1990 after which she was treated as an outdoor patient. The plaster of the victim was removed on 13.04.1990 but her arm was again re-plastered, which was removed on 11.05.1990.

11. Ms.Tiwari also contends that the learned Trial Court has not appreciated the evidence of various witnesses and the testimony of the victim finds support from the MLC, Exhibit PW-4/B, which says "Not fit for statement". Counsel further

places reliance on the testimony of PW-11, Dr. R.S. Rana, Neuro Surgeon, from Rana Nursing Home, who examined the victim on 06.03.1990, opined that the injuries sustained by the victim were grievous in nature, whereas nothing has been placed on record by the respondents to rebut the medical evidence.

12. Per contra, supporting the impugned judgment, Mr. J.P. Malviya, learned counsel for the respondents, submits that the learned Trial Court after appreciating all the facts, circumstances, submissions and evidence led by both the parties concluded with the innocence of the respondents. It is further submitted that the victim as also her parents have made wild allegations which have rightly been discarded by the learned Trial Court.

13. Learned counsel for the respondents also contends that the opinion of the Doctor, PW-4, who prepared the MLC, makes it abundantly clear that the injury suffered by the victim was on account of a fall from stairs. It is further contended that no demand of dowry was made by the respondents from the victim and even otherwise the statement of the victim is unreliable as there are contradictions in the statement made by her under Section 161 Cr.P.C. and the statement made by her before the Court. Counsel for the respondents further contends that merely because the victim was hospitalized that by itself cannot be a ground to implicate the respondents herein.

14. Learned counsel for the respondents also submits that having regard to the statement made by the victim on 26.05.2016 that since the year 2010 she has been residing with respondent no.1 and her children and further that all the disputes and differences between the parties stand resolved and also taking into consideration the statement made by the children of respondent no.1 that the victim and respondent no.1 are residing together happily as a family since the year 2010, the present appeal is liable to be dismissed.

15. We have heard learned counsel for the parties at length, considered their rival submissions and examined the impugned judgment in detail rendered by the Trial Court.

16. Before we dwell into the factual aspects, it would be relevant to reproduce Section 498A of the Indian Penal Code:

"498A - Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this Section, "cruelty" means- (a) Any wilful 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."

17. Section 498A IPC lays down two types of cruelties. The first, being, wilful conduct of a nature which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Wilful conduct can be both mental and physical but it must relate to a woman. The second, being harassment with a view to coercing her or any person related to her to meet unlawful demand of any property or valuable security or on account of her failure or of any person related to her to meet such demand. The second aspect is relatable to the property, and should be with a view to coerce her or any other person related to her to meet any unlawful demand of property or valuable security. Further, the harassment should be on account of her failure or failure of any other person related to her to meet the said demand.

18. We may now notice that the State machinery was put into motion when DD No.18-A entry was recorded, as per which an information was received that a lady has jumped from the terrace. Another DD entry, being DD No.2A, was received from Ram Manohar Lohia hospital that a lady has fallen from the roof of her house. We may also notice that in the MLC, which was recorded at Ram Manohar Lohia

hospital, shows history of "fallen from the stairs".

19. As far as the reliance placed by counsel for the State upon the statement (Exhibit PW1/DA) made by the victim soon after the incident is concerned, the trial court has reached a conclusion that the said statement was fabricated for the reasons that evidence on record shows that the victim was not fit for making statement on 23.3.1990.

20. The statement of PW-11 reads as under :-

"I treated Mrs Geeta in Rana Nursing Home w.e.f. 6.3.90 for head injury and brain injury with confusion and difficulty to speak. She also had disturbed balance in walking at that time. She was earlier treated at Ram Manohar Lohia Hospital where MLC was prepared. She was treated in nursing home till 13/7/90 and then through OPD. As per record she was seen in OPD on 17/7/90 vide Ex.PW 1/A-14. on 13/3/90 (Ex.PW 1/A- 15). on 27/3/90 (Ex.PW 1/A-17). ___4./90 (Ex.PW 1/A-18) on 20.4.90 (Ex.PW 1/A-19), and 11/5/90 (Ex.PW 1/A-20.) on 15/6/90 (Ex.PW 1/A-21). Treatment notes are in my hand and bears my signatures and prepared at the time of examination of the patient.

xxx By counsel for accused.

I have seen (Ex.PW 1/A-15). On that day patient was not fit for making statement. Similarly was her condition on 20/3/ 90 as per Ex.PW 1/A-16. Similar was her condition on 27/3/90 as per Ex.PW 1/A-17. Her condition continued to remain so upto 11/5/90 as per Ex.PW 1/A-18, 19 and 20. But on 11/5/90 there was slight improvement in her mental and physical condition. On 15/6/;90 there was slight improvement in her speech, walking was better but her memory was still wak, as per Ex.PW 1/A-21. During our treatment, upto 15.6.90 she did not tell us as to how she received injury as history of assault has not been mentioned in the record. Had patient disclosed the cause of injury, I would have certainly mentioned in the case sheet."

21. Upon analyses of statement of PW-11, it would leave no room for doubt that she was not fit to make any statement. We are in agreement with the reasoning

adopted by the learned trial court based on the testimony of PW-11, Dr. R.S. Rana, which shows that the victim was not fit for making statement on 22.03.1990 when the alleged statements, Ex.PW1/DA and Ex.PW1/DD, were recorded by the Investigating Officer.

22. Further the statement of PW-1, the victim, would also show that she was not in a fit state of mind to make a statement. Her testimony shows that there was loss of memory and whenever her memory improved she used to recollect things, while on the contrary the statement shows details which makes it highly improbable to make the statement reliable. The statement of PW-1 also finds to be unreliable on account of material discrepancies in the statement Ex.PW1/DA and the statement made in the Court.

23. The material discrepancy in the statement of PW-1, which emerged, is as under: In her statement, Ex.PW 1/DA, she has stated that Kamlesh and her husband Tej Singh gave beatings to her at the instance of her husband who was standing there. Accused Kamlesh gave beatings by a stick meant for washing clothes (thapi), while accused Tej Singh gave beatings to her by a danda. In her statement Ex. PW 1/DA she has not stated that accused Prem Chand had also given beatings to her. However, in the Court, she has stated that all the three accused gave beatings to her. Accused Prem Chand gave beatings to her by fist and kicks whereas accused Kamlesh treated her by stick meant for washing clothes (thapi) and Tej Singh gave beatings to her by a danda. While appearing in the court, she has improved the role of accused Prem Chand.

24. Additionally, we may also note from the testimony of the victim that relations between the respondents and parents of the victim always remained cordial. Conduct of respondents also shows their innocence and that they were having good relations with the victim and her parents. It is further pertinent to note that immediately after the incident, respondents had removed the victim to Bali Nursing Home and at the same time informed the parents of the victim. Furthermore, PW-3 i.e. father of victim has himself admitted that he had received the information about the incident at about 7:00 p.m., which according to the victim is the time of the incident. Moreover, respondents remained present in Bali Nursing Home when the

parents and brother of the victim showed their dissatisfaction with regard to treatment provided to the victim and also assisted in shifting of the victim from Bali Nursing Home to Ram Manohar Lohia hospital.

25. In the instant case, the Trial Court has also analysed the cross-examination of the victim dated 02.04.1998 and in our view, rightly reached the conclusion that the victim is an unreliable witness as according to the victim beatings were given all over her body by respondent Kamlesh and respondent Tej singh whereas PW-8, Dr. L.N. Gupta, in his cross-examination has clearly stated that injuries sanctioned in MLC were possible by fall from staircase and also stated that fracture in forearm was possible only if hand comes in between the ground and body during the fall from staires.

26. It will also be useful to examine the MLC which shows injuries suffered by the victim:

(i) CLW 2" x 1" (R) parietal region (depth not probed),

(ii) CLW 1" x " (R) pinaa,

(iii) Tenderness, swelling (R) forearm.

27. The injuries as per the MLC are not substantiated by the statement of the victim and the discrepancy of the house where she was beaten by a danda and a thapi. In case her testimony is truthful, it would have been supported by the MLC.

28. While deciding the present case, the court must further take into account the presumption of innocence of the respondents and the acquittal by the trial court adds to the presumption of his innocence. In State of Maharashtra through CBI v. Ahmad Shah Khan @ Salim Durani and Anr. reported in 2013 (3) Scale 272, the Apex Court held that :

"47. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment

of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

29. In the light of the above discussions and taking into consideration the present scenario that the respondent no.1 and victim are now living happily as a married couple, we conclude that the learned Trial Court has given valid and substantial reasons for disbelieving the prosecution version of the case and did not commit any error in recording the finding of acquittal in favour of the respondents.

30. Resultantly, in the absence of any evidence which connects the respondents to the injury of the victim and also in the absence of any evidence to show that the victim was beaten by the respondents, we do not find any valid or justifiable ground to interfere with the impugned judgment and order of the trial court.

31. Accordingly, for the foregoing reasons, the appeal is hereby dismissed.

Appeal dismissed.