

State of M.P. Vs. Kesharimal

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Court : Madhya Pradesh

Decided On : Aug-03-1994

Reported in : I(1995)DMC89

Judge : A.G. Qureshi and ;R.D. Shukla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 498A

Appeal No. : Crl. App. No. 236/87

Appellant : State of M.P.

Respondent : Kesharimal

Advocate for Def. : Oberai, Adv.

Advocate for Pet/Ap. : Jain, Adv.

Disposition : Appeal dismissed

Judgement :

A.G. Qureshi, J.

1. This is an appeal by the State against the judgment passed by the Third Additional Sessions Judge, Dhar, in S.T. No. 181 of 1986 whereby the respondents have been acquitted of committing an offence under Section 498A and Section 302 read with Section 34 IPC.

2. The facts leading to this appeal, in short, are that the respondents were charged for committing offences under Sections 302 read with Section 34 and 498A of the Indian Penal Code on the allegation that on 21-3-1986 at Badnawar, they caused the death of Madhubala wife of Ashok Kumar in furtherance of the common intention to cause her death and before her death they treated her cruelly with the intention of getting dowry. The accused objected the guilt and pleaded not guilty. After the trial the learned lower Court acquitted the respondents. Hence this appeal by the State.

3. The story of the prosecution is that the deceased Madhubala was wedded to Ashok Kumar. The respondents used to treat her cruelly because of the non-payment of sufficient dowry and not giving glasses to the members of the barat. On 21-3-1986 at about 5 a.m. accused Keshrimal and Ranibai poured kerosene on Madhubala and burnt her and then they acted as if they were trying to save her. Because of this they also get burn injuries in their hands. Accused Shantilal and his wife threatened Madhubala and kept her under surveillance in the hospital also. The threat was that if she told the truth to anyone then she will not be allowed to enter their house. Although Madhubala in her dying declaration had said that she was burnt by spilling of oil from the chimney (oil lamp), but in the Ratlam hospital she later on narrated the true story to P.W. 2 Subhadra Bai and brother-in-law Gendalal. When the police investigated the case, it found the respondents responsible for committing the offences under Section 302/34 and 498A of the Indian Penal Code and submitted a charge sheet before the Court against them. The Sessions Court, after the Trial, acquitted the respondents. Hence the State has filed this appeal.

4. In the arguments the learned Government Advocate has not been able to point out any such material and infirmity in the judgment of the lower Court which could persuade us to take a view different then the one taken by the learned Trial Court. Dr. Porwal (P.W. 5) was in-charge of Civil Dispensary, Badnawar as a Medical Officer. The deceased was brought to his hospital in a burnt state. The report was sent to the police by one of the persons accompanying her. He examined Madhubala and found severe burn injuries to the extent of 80 per cent on her body. It was not, therefore, disputed before the Trial Court that Madhubala died of

injuries due to burns. A dying declaration was recorded before the Naib Tahsilder, who was also the Executive Magistrate, but the prosecution did not produce that dying declaration before the Court. Therefore, the defence produced certified copy of the dying declaration as Ex. D-5. In that statement of dying declaration recorded by the Magistrate Madhubala has stated that on 21-3-86 at 5 a.m. when she was getting down with an oil lamp in her hand from the stair-case her silken sadi caught fire and she was burnt. She was alone in the upper room. On the date of incident her husband was not with her because he had gone on government tour. In the house her mother-in-law, father-in-law and sister-in-law were residing. They all took care of her and nobody intentionally burnt her. There was no dispute about the dowry. The Trial Court has also dealt with the prosecution story of threat given by the father-in-law and mother-in-law of the deceased that she should not divulge the truth. The Court has discussed the statement of P.W. 1 Arun Kumar who says that Madhubala at the time of the incident was shouting that these people had killed her. In the hospital Urmila Bai had told Madhubala that whatever has to happen has happened, now what will happen if she cries. But in para 11 he had admitted that Madhubala was short sighted. In para 17 he has said that because of shouting of Madhubala that she was killed, he believed that the accused persons have killed her. But he did not make a report to anyone and his family members and also she did not lodge any report.

5. Subhadra Bai (P.W. 2) states that Madhubala had told her that because of the spilling of the oil from the lamp and catching fire she was burnt. Upon that the witness told Madhubala that she was telling a lie. Thereupon Madhubala stated that if she told the truth the accused persons would not allow her to enter the house. When she asked the accused what they have done, they told that they took Madhubala out of the house after breaking open the door. On that Madhubala told that the door was open. The Trial Court while appreciating the evidence of these witnesses has noticed that Madhubala had said that she was under the threat of the accused then she could also say that she was burnt by the accused persons.

6. Shantilal (P.W. 6) also states that Madhubala has said that she has been burnt, but she did not name any one because the accused persons were present there. This witness states that after 2 or 2 1/2 months when the police had called him

then he told this story to the police and when Madhubala had told this Urmila Bai was not with him. This witness further states that although he was confident that Madhubala was burnt by these people but he did not lodge any report with the police. As the aforesaid statements and unnatural conduct of these witnesses, has led the Court to hold that they are not reliable witnesses and there is nothing to find fault with the aforesaid appreciation of the evidence.

7. The most important thing is that the dying declaration Ex. D-5 is a detailed dying declaration and a bare look at the dying declaration shows that the Executive Magistrate had first obtained the opinion of the doctor concerned whether Madhubala was in a fit state to make the dying declaration and the dying declaration is not only a mere statement, but the Executive Magistrate has practically cross-examined the deceased on all material particulars. When the deceased stated about the burning from chimney she was asked, was there no light in the house upon which she said that 2 or 3 days before the incident the bulb had fused. She was asked about the number of rooms in the house. About her husband she has stated that he had gone to Sardarpur. She was also asked whether there was any dispute in the family upon which she said that there was no dispute in the family. Then she was asked as to who took care of her whereupon she said that her mother-in-law, father-in-law and others had taken care of her. She was asked whether somebody intentionally put fire, upon which she says that nobody intentionally did anything. She was also asked as to who was present. She said that her sister and brother-in-law have come. She was also asked whether there was any dispute about dowry to which also she said no. As such in this dying declaration in the form of questions and answers all pertinent questions were put to the deceased and in her statement she has completely absolved the accused persons from any responsibility of her death as well as any dispute about the dowry or any other domestic problem in the house. In the aforesaid circumstances the judgment of the learned Trial Judge cannot be said to be infirm or perverse or suffering from any such infirmity which may lead us to hold that the Trial Court has not properly appreciated the evidence on record or has omitted to consider the material evidence adduced by the prosecution.

8. In the result we find that it is not a fit case for interference. The appeal filed by the State, therefore, fails and is accordingly dismissed.

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