

Phool Singh and anr. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-03-1997

Reported in : II(1998)DMC632

Judge : R.S. Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

Appeal No. : Crl. A. No. 92 of 1992

Appellant : Phool Singh and anr.

Respondent : State of M.P.

Advocate for Def. : P.D. Gupta, Govt. Adv.

Advocate for Pet/Ap. : R.K. Samaiya, Adv.

Disposition : Appeal allowed

Judgement :

R.S. Garg, J.

1. The accused persons stand convicted for commission of offence under Section 304B, Indian Penal Code and have been awarded 7 years R.I. Being aggrieved by the conviction and award of the sentence, the appellants have preferred this appeal.

2. The prosecution case, in brief, is that Geetabai wife of appellant No. 1 committed suicide at about 10 a.m. on 27th June, 1990. When the matter was reported to the police, offence was registered and after completing the investigation the charge sheet was filed.

3. The prosecution case, in brief is that deceased Geetabai daughter of Panna Lal was married to the accused Phool Singh somewhere in the year 1988. The appellant No. 1 is the husband and the appellant No. 2 is the mother-in-law of the deceased. The prosecution case proceeds and states that on 27.6.1990, the Village Choukidar Lalaram s/o Hazarilal lodged a report to the police that he was informed by one Pappu that his Bhabhi (sister-in-law) had committed suicide. The police made usual investigation and filed charge sheet.

4. The accused persons denied the guilt and inter alia pleaded that they never made any demand of dowry, they did not harass the deceased; they were never cruel to the deceased and there could have been any other reason for commission of suicide by her. The Trial Court framed the charges under Sections 498A and 304B.

5. After recording the evidence and hearing the parties, the Trial Court acquitted the accused persons of charges framed under Section 498A, but awarded 7 years sentence after finding them guilty under Section 304B. Being aggrieved by the said judgment, the appellants have filed this appeal.

6. Learned Counsel for the appellants contends that acquittal of the appellants under Section 498A would remove the very foundation on which the appellants could be convicted for commission of the offence punishable under Section 304B.

7. On the other hand, Mr. Gupta, learned Government Advocate submits that independent of acquittal under Section 498A, the appellants were rightly convicted for commission of the offence under Section 304B.

8. Section 498A of Indian Penal Code reads as under :

'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.'

The thrust of the Legislature in enacting Section 498A is that when the husband or the relative of the husband of a woman, subjects such woman to cruelty, they shall be punished. Section 498A has been enacted and brought in the statute book so that the helpless woman is saved from the unhuman/inhuman behaviour of her husband and his relatives. The cruelty as defined in the explanation appended to Section 498A takes into its sweep the wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman or 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. The learned Trial Court, in its wisdom has acquitted the accused persons of charges under Section 498A. Their acquittal would mean that the learned Judge did not find that the husband or relatives of the husband subjected the woman to cruelty either by their wilful conduct which was likely to drive the woman to commit suicide or of causing harassment to the woman with a view to coercing her or any person related to her to meet any unlawful demand.

9. Section 304B of Indian Penal Code reads as under:

'Where the death of a woman is caused by burns or bodily injury or occurs otherwise under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, for, on in connection with, any

demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death.

Explanation-For the purposes of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.'

10. According to Section 304B where the death is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of the marriage then the death shall be called 'dowry death' provided it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. The word 'dowry' according to the explanation shall have the same meaning-as is given in Section 2 of the Dowry Prohibition Act, 1961. The law provides that whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years, but may extend to imprisonment for life.

11. Before one can be held guilty for commission of the offence under Section 304B, the prosecution is required to prove that the death was by burns, or bodily injury or occurred otherwise than under normal circumstances within seven years of the marriage and, the prosecution is also obliged to prove, that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. Unless both the aspects are proved beyond shadow of doubt, a person facing the charge under Section 304B cannot be convicted. What is to be noted under Section 304B is that the prosecution is obliged to prove that soon before the death by burns or bodily injury or unnatural death within seven years of the marriage the deceased was subjected to cruelty or harassment. Section 498A, as observed above, also refers to the cruelty. The foundation for conviction of a person, under Section 498A in case the wife is alive and under Section 304B in case of the dowry death is not similar but the same. The prosecution, in each of the case is bound to prove that the husband or the relative of the husband subjected such woman to cruelty for

making a demand of dowry. Section 304B is aggravated form of Section 498A. In a charge under Section 498A, Indian Penal Code, the aggrieved party is alive and is available to give her statement in the Court, but in a case of Section 304B the aggrieved party is dead, and the circumstances alone would lead to the guilt of the accused. If the cruelty extended by the husband or any relative of the husband is not proved for recording a conviction under Section 498A, the very foundation on which the conviction under Section 304B can be recorded is removed. In absence of a finding that the deceased was subjected to cruelty in relation to demand of dowry by the husband or relative of the husband within 7 years of the marriage, the accused cannot be convicted for commission of the offence under Section 304B.

12. Mr. Gupta, learned Government Advocate submits that the evidence on record is sufficient to prove that the demand of dowry was made; the deceased was subjected to cruelty and the evidence would lead to the only conclusion that the accused persons are answerable to charge under Section 304B, Indian Penal Code. True it is that if sufficient material is available on record, the accused persons Could be convicted for commission of the offence under Section 304B, but unfortunately the State or any other person aggrieved did not choose to challenge the acquittal of the accused recorded under Section 498A. If the evidence was insufficient for recording conviction under Section 498A, its sufficiency would always be doubted for recording a conviction under Section 304B. Non-challenge to the acquittal under Section 498A makes the said finding final and absolute. As the finding stands, it is proved that the accused persons i.e. the husband and the mother-in-law did not subject the deceased to any cruelty for making any illegal demand within seven years of the marriage. In view of the finding recorded by the learned Trial Court which cannot be interfered with by this Court in appeal filed by the accused, I have no option but to allow the appeal and acquit the accused persons.

13. The appeal is allowed. The conviction recorded and the sentence awarded to the accused persons are set aside. The accused persons are on bail. Their bail bonds are discharged.

