

Omprakash Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-08-2004

Reported in : I(2004)DMC794

Judge : S.L. Kochar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 306; ; [Evidence Act, 1872](#) - Sections 113A

Appeal No. : Criminal Appeal No. 1065 of 1996

Appellant : Omprakash

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. A.G.

Advocate for Pet/Ap. : S.K. Vyas and ; Vikas Rathi, Adv.

Disposition : Appeal dismissed

Judgement :

S.L. Kochar, J.

1. This appeal has been filed by the appellant aggrieved against the order dated 1.10.1996 passed by I Addl. Sessions Judge, Mhow, District Indore, in Sessions Trial No. 391/1994, whereby convicted him under Section 306, I.P.C., sentenced

to undergo R.I. for five years with fine of Rs. 1,000/-, in default of payment of fine additional S.I. for one month, also convicted under Section 498A of the I.P.C., sentenced to R.I. for two years and fine of Rs. 1,000/-, in default of payment of fine, additional S.L for one month. Both the sentences have been directed to run concurrently.

2. The prosecution case as unfolded before the Trial Court was that deceased Anita was married with the appellant on 8.5.1990. She was found dead because of burn injuries along with her two minor sons Akash and Vikas aged one and a half years and seven months respectively inside the house of the appellant. FIR (Ex. P.31) was lodged by her father Sukhnandan (P.W. 7). According to this report, after the marriage, appellant and his other relations i.e., father-in-law, mother-in-law and sister-in-law were taunting her for not giving proper dowry to her by him. They were asking her to bring colour TV, scooter. Whenever appellant was visiting his house at Indore, he was demanding T.V. and scooter. The complainant was not able to satisfy his demand because of which deceased Anita was ill-treated by the accused persons and they were beating her. Whenever she was visiting the house of the complainant, Sukhnandan (P.W.7), she was complaining against the appellant and other acquitted accused persons regarding demand of T.V, scooter and Rs. 25,000/- cash amount. He has further complained in the written report (Ex. P. 15) that because of poverty he could not satisfy their demands. Therefore, deceased Anita was turned out from her matrimonial house by the appellant after beating her and thereafter she lived with him for about eighteen months and also gave birth to the first child. After first delivery, father-in-law and the appellant reached at the house of complainant Sukhnandan (P.W. 7) and assured him for not demanding money, scooter, etc. Complainant was also suggested by his neighbourers to sent Anita with them. But, again appellant and acquitted co-accused persons started beating her and delivering threat to burn her. The complainant did not lodge any report regarding all these because of relation. On 29.4.1994, in the morning, at 8.30 a.m. appellant and acquitted co-accused persons attempted to commit murder of Anita by pouring kerosene oil on her person. At that time Anita ran away from their house and took shelter at the house of one Narayan. At that time appellant Omprakash was having can of twenty litre kerosene oil in his hand and deceased wife was saved by Virendra Chouhan

(P.W. 1), Vijay Mehra (P.W. 2), Surendra (P.W. 3) and Chandrakala (P.W. 4) and one Kamal. When she was turned out from the house of the appellant, she and her brother also lodged the report in the P.S. vide Ex. P.14. In this report dated 18.4.1991, she had complained, about ill-treatment, against the appellant. On this report, police has not registered any offence saying that it was a family dispute between the husband and wife. On 2.5.1994, in the morning at 9.00 a.m., deceased Anita committed suicide by ablazing herself and her two minor children Akash and Vikas. On the basis of this report, the P.S. Mhow registered Crime No. 252/ 1994 vide F.I.R. Ex. P.31. The police registered Murg No. 21/94 and thereafter prepared spot map, done the inquest of deceased Anita vide Ex. P.3 and sent the injured Vikas and Akash for medical examination. Their medical report is Exs. P.21 and P.23. They were examined by Dr. Mahesh Kumar Tiwari (P.W. 10). This doctor also had performed the post-mortem of the dead body of deceased Anita vide post-mortem report Ex. P.25 and autopsies of Vikas and Akash were conducted by Dr. Surendra Dubey (P.W. 11) vide post-mortem report Exs. P.27 and P.29 respectively. Both the children died because of cardiac respiratory failure due to burn injuries and its complications whereas deceased Anita died asphyxial death due to burn injuries. Through Ex. P.4, several articles, burnt cloths having smell of kerosene, match stick, one stove in working condition with kerosene oil were seized. Deceased Anita was having 100% ante mortem burn injuries, whereas Vikas and Akash were 90% and 100% burn injuries respectively.

3. After required investigation, police filed the charge sheet against the appellant and father-in-law, mother-in-law and sister-in-law of the deceased. They all have denied the charges and according to them all the three deceased had met accidental death and they claimed for trial. The prosecution examined in total thirteen witnesses to prove its case whereas appellants have not examined any witness in their defence. The learned Trial Court, after detailed assessment of the prosecution evidence and hearing both the parties, acquitted father-in-law Dwarkaprasad, mother-in-law Chandabai and sister-in-law Saintara from all charges. The appellant was also acquitted from the charge punishable under Section 304B of the I.P.C. but convicted under Sections 306 and 498A of the I.P.C. and sentenced as mentioned above. Hence this appeal.

4. I have heard Mr. S.K. Vyas and Mr. Vikas Rathi, learned Counsels for appellant, Mr. G. Desai, learned Dy. A.G, for respondent State and also perused the entire record carefully.

5. The learned Counsel for appellant has submitted that the prosecution has suppressed Murg intimation report which could have given the earliest version about the incident and written report (Ex. P.15) lodged by Sukhnandan (P.W. 7) after the lapse of three days. This report (Ex. P.15) was a typed report and in this report he has not given any reason for delay in lodging the report. The learned Counsel has also submitted that in the statements of Sukhnandan (P.W. 7) and Mahesh Kumar (P.W. 8), brother of the deceased Anita, there are material omissions and contradictions, therefore, same could have not been relied by the learned Trial Court. He further pointed out the statement of Dr. Mahesh Kumar Tiwari (P.W. 10), who has opined that there was possibility of accidental death of the deceased persons.

6. On the other hand, the learned Dy. A. G. Shri. Desai has supported the judgment of conviction passed by the learned Trial Court. He vehemently submitted that deceased committed suicide along with her two male children, which shows that she was severely ill-treated and harassed by the appellant and since she committed suicide within seven years of the marriage because of the cruel behaviour of the appellant, the appellant has been rightly convicted by the learned Trial Court under Sections 306 and 498A of the I.P.C.

7. Having heard the learned Counsels for parties and after perusing the record, this Court is of the opinion that the learned Trial Court has passed a very well reasoned and detailed judgment after appreciating the evidence as well as the rival contentions.

8. So far as non-production of Murg intimation report is concerned, the same would not affect the prosecution case. Murg is a simple intimation of death of a person. It is not necessary that same must have contained material fact about death of the deceased. Apart from this, deceased wife Anita and her both the children received burn injuries in the residential house of the appellant in a day time at 9.00 a.m. According to admitted factual position, on the first floor, appellant

was residing with the deceased persons and on the ground floor, his father, mother, brothers and sisters were residing. The deceased Anita died because of 100% burn injuries on the spot and her two minor children received 90% and 100% burn injuries. They were alive but nobody reached to rescue them till they received severe burn injuries, though it was the day time and the house was situated in a thickly populated locality as also on the lower portion of the house, the acquitted co-accused persons and other relations of the appellant were residing. This circumstance speaks volumes and is sufficient to draw adverse inference against the appellant and his other family members, though they were residing separate from the deceased. The appellant also kept silent regarding the fact of lodging of the report in the PS. When his wife and two sons had met severe accidental burn injuries inside his own house, either he had reported the matter in the Police Station or any other persons of that locality. According to the prosecution case, brother of the appellant Manoj who has lodged the report in the P.S., has not been examined by the prosecution and the neighbour broke open the door and thereafter took the children to the hospital. The report lodged by brother of the appellant Manoj, has not been filed along with the charge sheet and R.S. Chouhan (P.W. 13) in his statement in paragraph 12, has stated that this Murg intimation was not filed only because of mistake. He has denied the suggestion of the defence that deceased persons met accidental death. Obviously this suggestion of the defence does not appear to be appellable looking to the spot map, percentage of burn injuries and instantaneous death of deceased Anita inside the house where her two minor children had also received 90% and 100% burn injuries. The spot map (Ex. P.1) has been proved by R.S. Chouhan (P.W. 13). He has also seized through seizure memo Ex. P.4, burnt cloths having kerosene smell, match stick, and stove with kerosene from the spot. The Investigating Officer can be held negligent by not filing Murg intimation report but only on this Court, the whole prosecution case cannot be thrown out.

9. I find no substance in the contention of the learned Counsel for appellant that there was delay in lodging the F.I.R. by Sukhnandan (P.W. 7), father of the deceased Anita. This report Ex. P. 15 was lodged on 5.5.1994. In Court, he has given explanation that after the incident he visited police station twice or thrice but his report was not written because of some or other reason, though, this fact is

missing in his written report and he was contradicted on this point, but one can visualise the situation where the complainant (P.W. 7), father of the deceased, was in mental trauma because of death of his daughter and two young grand sons. He was residing in Indore. Incident had taken place in Mhow. Under this situation, if there is delay of two-three days, the same would not be fatal to the prosecution. The statement of this witness as well as the statement of Mahosh Kumar (P.W. 8) are containing ample material regarding the fact that after the marriage, deceased was ill-treated for demand of various articles as well as cash amount. Deceased and her brother Mahesh Kumar (P.W. 8) had also lodged report Ex. P.14 which has been proved by Mahesh Kumar (P.W. 8). This is the carbon copy of the report supplied to them by the concerned police after lodging of the report. In this report also, the fact of ill-treatment, demand of dowry and turning out the deceased from the house of the appellant by appellant is mentioned. This incident had occurred when the deceased was carrying her first pregnancy. Thereafter she lived with her father Sukhnandan (P.W. 7). After the birth of first child, the appellant and his father reached at his house and brought her back giving assurance for not demanding dowry and ill-treatment or cruel behaviour with her in future. But in spite of this, after some days the appellant started the same behaviour.

10. The learned Counsel pointed out some contradictions in the statements of P.W. 7 Sukhnandan and Mahesh Kumar (P.W. 8). I have gone through these contradictions and according to me these are bound to occur, but all these contradictions are not very material. The FIR (Ex. P. 31) lodged by the complainant is fully corroborating the statement of Sukhnandan (P.W. 7) in Court on material particulars regarding demand of T.V., scooter, etc. just after the marriage by the appellant and cash amount of Rs. 25,000/-. His statement is also corroborated by Mahesh Kumar (P.W. 8), who has also emphatically stated that deceased was ill-treated by the appellant. He is a witness who brought the deceased from her house and went to the Police Station along with her for lodging the report (Ex. P.14). In view of his statement and the report Ex. P. 14, it is amply proved that the deceased was ill-treated and cruelly behaved for demand of T.V., scooter and other articles with cash amount of Rs. 25,000/- by the appellant and because of which she along with her two sons committed suicide. The spot map,

post-mortem report as well as the surrounding circumstances are clearly establishing that deceased committed suicide after setting her to fire after pouring kerosene oil. Along with her, she also took her two sons in the unfortunate incident of suicide.

11. The learned Trial Court has held that the possibility of accidental death of both the children could not be ruled out. This will not make any difference whether both the children met accidental death or deliberately set fire while committing suicide by the deceased Anita. There was no eye witness of the incident. Therefore, one has to visualise the situation on the basis of the circumstance. The spot map and the circumstance of 100% burn injuries established that Anita committed suicide. Whether both the children also received burn injuries through their mother accidentally or they were also made to burn by their mother is not very material. Fact remains that along with the mother, two children have also died because of the burn injuries and they were not rescued by anybody within time. After setting fire, they must have raised cry which could be easily overheard by the inhabitants of their own close relations residing on lower portion of the house and other neighbourers. But nobody came in time to save them. Even deceased Anita had committed suicide but it is a general phenomenon that after receiving fire, the person is running here and there and because of pain and agony should also cry. In the room where Anita died and children received burn injuries, the pieces of burnt cloths and other articles were found by the police.

12. The learned Trial Court has acquitted the appellant from the offence under Section 304B of the I.P.C. on the ground that there was no evidence led by the prosecution that soon before her death, there was any ill-treatment for demand of dowry and convicted the appellant under Section 306 of I.P.C. with the help of presumption clause as envisaged under Section 113A of the Evidence Act and this Court is of the opinion that the learned Trial Court has rightly convicted the appellant under Section 306 of I.P.C. for suicidal death of his wife, who died within seven years of her marriage and who was ill-treated for demand of some articles and cash amount. Therefore, there is no substance in this appeal. Thus, the conviction and sentence as awarded by the Trial Court is maintained.

13. In view of the foregoing discussion, the appeal is dismissed.

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