

Rajkumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-26-2005

Reported in : II(2005)DMC748; 2006(3)MPLJ492

Judge : A.K. Gohil and ;Chandresh Bhushan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304B, 302 and 498A; ;Code of Criminal Procedure (CrPC) - Sections 161 and 374

Appeal No. : Cr.A. No. 51 of 1997

Appellant : Rajkumar

Respondent : State of M.P.

Advocate for Def. : C.S. Dixit, Public Prosecutor

Advocate for Pet/Ap. : D.R. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Chandresh Bhushan, J.

1. Aggrieved by his conviction for committing offences punishable under Sections 498A and 302 read with Section 34 of IPC and sentences of rigorous imprisonment for three years and life, respectively vide judgment dated

30.11.1996 of Additional Sessions Judge, Lahar, this appeal has been filed by the appellant under Section 374 of the Code of Criminal Procedure.

2. Prosecution story in brief is that one Manjudevi (hereinafter referred to as deceased) was married with the appellant on 18.2.1987 in accordance with Hindu rites. The parents of the deceased had given dowry in accordance with their financial status but the appellant and his family members were not satisfied with it. Therefore, appellant as well as his family members used to treat the deceased with cruelty. They used to physically assault her. Because of all these problems, the deceased remained with her parents for almost a year, but, thereafter, appellant took her back to his house promising that thereafter he will not ill-treat her. Almost one and a half months afterwards, on 1.11.1992 at around 7.30 a.m., when the deceased was sitting in the courtyard, the appellant caught hold of her by neck and took her to a room inside the house where Jaldevi, the mother of the appellant poured kerosene oil over her while the appellant covered her mouth with his hand and thereafter said Jaldevi ignited a match and put the deceased on fire. Thereafter, they both closed the doors of the room from outside and went away. A television set in house was on at that time and because of it, the shrieks of the deceased could not be heard by anyone. However, after some time, father of the appellant on hearing the shrieks or after seeing the smoke came there and opened the room to find the deceased burnt. He (Vrindavan) with the help of the neighbours took the deceased to the local hospital at village Lahar. The medical officer of the hospital, Dr. R.K. Rajoriya (P.W. 13) attended the deceased and also informed the police. Thereupon, A.S.I. Rampal Singh Sisodiya (P.W.12) went to the hospital and took the report (Dehati Nalishi Ex. P/17) lodged by the deceased. The medical expert Dr. Rajoriya (P.W.13) found the condition of the deceased serious and, therefore, referred her to Gwalior hospital and also recorded her Dying Declaration (Ex. P/19). Thereafter, the deceased was sent to Gwalior with the police but she succumbed to the burn injuries on her way and was, therefore, brought back to Lahar. Autopsy was conducted again by Dr. Rajoriya (P.W.13). Meanwhile, the parents and relations of the deceased got information and reached Lahar. After completing the investigation, a charge-sheet was filed by PS. Lahar, District Bhind against the appellant, his mother Jaldevi, his father Vrindavan and brother Shivkumar. Out of the said four persons, Jaldevi remained absconding

and, therefore, only the three remaining were tried before the Court of Additional Sessions Judge, Lahar (hereinafter referred as Trial Court).

3. The learned Trial Court accordingly charged the appellant and his father and brother for committing the offence punishable under Section 302 read with Section 34, Sections 304B and 498A of IPC. All the three of them abjured their guilt. During trial, in all fourteen witnesses were examined by the prosecution and four, including the appellant, testified in defence. After recording the evidence and after hearing the parties, the learned Trial Court pronounced its impugned judgment dated 30.11.1996 acquitting the father and brother of the appellant and convicting only the appellant for the offence punishable under Section 302 read with Section 34 and Section 498A of IPC.

4. Aggrieved by that conviction and the sentences awarded by the learned Trial Court, this appeal has been preferred by the appellant on the ground that the learned Trial Court has erred in relying on the testimony of the parents namely Parvati (P.W.8), Bhero Prasad (P.W. 9) and brother Rajkumar (P.W. 10) of the deceased and the medical expert Dr. Rajoriya (P.W. 13) as well as the Investigating Officer R.P.S. Sisodiya (P.W. 12). According to the appellant actually the deceased had committed suicide by burning herself after locking her inside the room of his house and, thereafter, she was later on recovered in serious condition. It is contended by the defence that the learned Trial Court has erred in disregarding the testimony of defence witnesses as well as an unexhibited document dated 4.11.1992 given by the local forensic expert to the police as his inspection report of the spot. It is submitted by the appellant that from all this evidence, it was amply clear that the deceased has committed suicide for the reasons best known to her and that she was never treated with any kind of cruelty. Respondent State on the other hand has supported the impugned judgment and the findings recorded by the learned Trial Court.

5. We have heard the learned Counsel for both the sides and have also perused the record. It is not in dispute that there was no direct evidence of any eye-witness about how the deceased got burned. She suffered burn injuries inside a room at the house of the appellant. This is amply clear from the testimony of the

prosecution witnesses Parvati (P.W. 8) and Bhero Prasad (P.W. 9), both of whom have stated that they had received information about ailment of the deceased whereupon they had gone to Lahar and after reaching the house of the deceased they were informed that the deceased was burnt. Dr. R.K. Rajoriya (P.W. 13) supporting their testimony has further stated that on 1.11.1992, when he was working as a medical officer at Public Health Centre, Lahar, one Vrindavan (father of the appellant) had brought the deceased in the condition of 100% burns to the hospital and after examining her, he had found that she had suffered 100% burn injuries from kerosene oil. He has clarified that smell of kerosene oil was coming out of the body of the deceased. He has also stated that on his inquiry, he was told by the deceased that she was burnt in the house. Even the defence witnesses Haribabu (D.W. 1), Ramsiya (D.W. 2) and Bhagwati Prasad (D.W. 3), all the three have in their examination-in-chief itself stated that they had seen the deceased lying burnt inside a room of the house belonging to the appellant and his parents. Thus, this was clearly established from the evidence of prosecution as well as defence witnesses that the deceased had suffered burn injuries in the house of appellant, in the morning of 1.11.1992. The Trial Court has also rightly concluded the same.

6. Prosecution witness Dr. R.K. Rajoriya (P.W. 12) who conducted the autopsy on the body of the deceased has also stated that on his examination together with one Dr. Mudgal, they had found that the deceased died because of shock due to burn injuries suffered by her on the same day. This part of his testimony has not at all been challenged before us and otherwise also is fully reliable. Thus, from the testimony of Dr. Rajoriya (P.W. 13), it is further established that the deceased died of the burn injuries so suffered by her early in the morning in the house of the appellant.

7. How did the deceased suffer those injuries? In this respect, admittedly there is no direct evidence of any eye-witness on record. The only evidence is about cruelty and ill-treatment by the appellant and his mother and of the two dying declarations of the deceased, one in the shape of Dehati Nalishi (FIR Ex. P/17) and the other is the declaration of the deceased recorded by medical expert Dr. Rajoriya (P.W. 13) as Ex. P/19.

8. Parvati Bai (P.W. 8) who is the mother of the deceased has stated that almost a year after her marriage when the deceased had come to their house, she had told her that the appellant and his mother both were ill-treating her and many times she was not given any food. This witness Parvati has further stated that thereafter she kept the deceased with her for almost a year and it was after a year that the appellant came to them and wanted to take back the deceased with him and because he had threatened them that if they will not send her this time, he will never take her to his house, that they had sent the deceased with him. She has also stated that almost a month and a half thereafter, the incident happened. Bhero Prasad (P.W. 9), father of the deceased has also stated almost the same. He has also stated that once a relation of the appellant who was in police, had also reported against them that they were not sending the deceased to her in-laws house. He has also stated that the appellant and other accused persons had even given her shocks of electric current and had once poured paste or solution of jaggery (Gud), Rajkumar (P.W. 10), brother of the deceased has also stated about complaint by the deceased to him about physical assault by the appellant. He has also stated about demand of rupees sixty thousand by the appellant and his family members. Even Parvati Bai (P.W. 8) has also said the same thing in her cross-examination but nothing in that respect has been said by her in her statement recorded under Section 161 of the Code of Criminal Procedure. She has also not uttered a word about it in her examination-in-chief nor has the father of the deceased said about it in his examination-in-chief. Therefore, this demand of rupees sixty thousand by the appellant and his family members appears to be only a subsequent improvement and, therefore, that part of the testimony of the said prosecution witnesses cannot be relied upon. However, as far as the testimony of these three witnesses namely Parvati (P.W. 8), Bhero Prasad (P.W. 9) and Rajkumar (P.W. 10) about their information regarding physical assault by the appellant and ill-treatment to the deceased is concerned, they have been cross-examined at length and nothing material has come in their cross-examination to doubt their testimony in that respect. The deceased has also mentioned about that ill-treatment meted out to her by the appellant and his mother in her Dehati Nalishi which is the first dying declaration (Ex. P/17). Such physical violence and cruel treatment clearly put the deceased in danger of her physical and mental health

and, therefore, amounted to cruelty as required under Section 498A of IPC.

9. In her both the dying declarations Ex. P/17 and Ex. P/19, the statement of the deceased was clearly that from the courtyard she was pushed into the room by her husband and thereafter inside the room, mother of the appellant had poured kerosene oil on her and had thereafter burnt her with a match stick and both she and the appellant had left the room after closing the doors from outside. Dying declaration (Ex. P/19) is recorded by the medical officer Dr. Rajoriya (P.W. 13) himself. It is submitted by the learned Counsel for the appellant that it does not contain any certificate of any medical expert about the condition of the deceased being fit to give the statement. This objection of the appellant's learned Counsel has no validity considering the fact that the medical expert himself was the person who has recorded the statement and in that statement he has specifically recorded that the deceased herself had said that she was fully in her senses. In such circumstances it cannot be said, that any other kind of certificate or any other medical expert was required. There is nothing on record to even suggest any reason for the said medical expert to have recorded a false statement or to have testified falsely against the appellant. The prosecution witness Longshree (P.W. 1) has stated that the deceased when taken to hospital was unconscious but this was not mentioned by her in her statement recorded under Section 161, Cr.PC and, she was declared hostile also because she resiled from that earlier statement of hers. In such circumstances her statement about unconsciousness of deceased does not inspire any confidence. The medical expert Dr. Rajoria has clearly stated that she was conscious and in senses and such patients could remain so for even upto 24 hours.

10. The learned Counsel for the appellant also took us through the whole record and pointed out towards an unexhibited document dated 4.11.1992 which appears to be an inspection report given by one A.K. Bhargava, Officer of the Mobile Unit of Forensic Science Laboratory, District Bhind in which he has mentioned that on inspection by him of the concerning room, it was found that the doors on their inner side towards the room had a bolt of latch (locking device) which was in a pulled condition. One prosecution witness Munnial (P.W. 3) has also said so in his cross-examination. This according to the learned Counsel clearly suggested that

the room from where the deceased was found burnt by her father-in-law and other neighbours was bolted from inside which was possible only if the deceased had herself locked her inside and this in turn suggested only an accidental or suicidal attempt by the deceased. Defence witness Haribabu (D.W. 1), Ramsiya (D.W. 2) and Bhagwati Prasad (D.W. 3), all three of whom, according to their statement, were neighbours of the appellant, have also stated that on the shouts of father-in-law of the deceased they had rushed to his house and had found a room locked from inside, full with smoke and, therefore, they altogether broke the door to find that the deceased was lying in burnt condition all alone inside. But one of them Bhagwati Prasad (D.W. 3) in his cross-examination has stated that the room where they so found the deceased was next to the courtyard of the house of the appellant while from the spot map (Ex. P/5) which has not been disputed before us, it is clear that the house had a courtyard and thereafter a room and beyond that room was a room where the deceased was found lying. This in turn means that Bhagwati Prasad (D.W. 1) was telling false story and actually he had never seen the deceased lying in the room where she was found. Similarly defence witness Haribabu (D.W. 1) has said that the room had two doors though later on he corrected it that it had only one door. But that statement of his in first breath about two doors suggested that he was also not a true witness. Similarly the remaining third witness Ramsiya (D.W. 2) in his cross-examination has said that a 'Jangla' (window like) was not broken meaning thereby that there existed a 'Jangla' while admittedly there was no such structure in the concerning room. This Ramsiya has also stated that there were some persons already standing before he reached but they were doing nothing meaning thereby as if they were waiting for him to be a witness. This is practically unbelievable that after seeing smoke coming out of a room and the shrieks of an old man, the person who reaches first would not try to open the door but would wait for other persons to come and witness the scene. Thus clearly, these defence witnesses Haribabu (D.W. 1), Ramsiya (D.W. 2) and Bhagwati Prasad (D.W. 3) do not inspire confidence and on the other hand also suggest development of false story by them. The prosecution witness Munnilal was declared hostile by the Public Prosecutor as he had resiled from his earlier version regarding seizure of tin, etc. from the spot, though he admitted his signatures on memo (Ex. P/6). Moreover he does not clarify when

and how the latch got broken.

11. As far as the unexhibited report dated 4.11.1992 is concerned, a perusal of the same shows that the inspection was carried on 2.11.1992 at 10.15 O'clock i.e., more than twenty-four hours after the incident and considering this intervening period possibility of building up of a defence cannot be overruled and in the absence of any statement of the concerning person, no credence can be given to it, to disbelieve the two dying declarations of the deceased.

12. Considering the whole evidence on record, we thus fully agree with the learned Trial Court that the prosecution evidence in this respect and especially the two dying declarations were fully reliable and by this evidence it is proved beyond doubts that such injuries by burning were caused to the deceased which were likely to cause her death and that the intention of the persons causing them could only be to cause her death. These burn injuries were caused to her by the appellant and his mother in pursuance of their common intention only. The conviction by the Trial Court, therefore, is fully justified and the impugned sentences also do not call for any interference. Thus, there is no substance in this appeal. It fails and is accordingly dismissed.

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