

Devkinandan Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-08-2002

Reported in : 2003CriLJ1502; 2002(4)MPHT135; 2003(1)MPLJ329

Judge : S.P. Khare, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B, 306 and 498A; [Evidence Act, 1872](#) - Sections 113A

Appeal No. : Criminal Appeal No. 1071/89

Appellant : Devkinandan

Respondent : State of M.P.

Advocate for Def. : Rajkumar Verma, Panel Lawyer

Advocate for Pet/Ap. : Rajendra Singh, Sr. Adv. and ;R.K. Shukla, Adv.

Disposition : Appeal partly allowed

Judgement :

S.P. Khare, J.

1. Appellant Devkinandan has been convicted under Sections 304B, 306 and 498A, IPC and sentenced to rigorous imprisonment for seven years each for the first two offences and to three years for the third offence.

2. It is not in dispute that deceased Manju was married to appellant Devkinandan on 11-6-1985 and she committed suicide on 4-9-1987 by consuming poison in her matrimonial home at Bina, Harnarain (P.W. 1) is her father, Kasturibai (P.W. 6) is her mother and Kamlesh (P.W. 5) is her brother. They live at a distance of 39 Kms. from Bina in Village Shahrai.

3. The prosecution case is that appellant Devkinandan was demanding a motor-cycle and a double bed as dowry. He was asking his wife to bring these things from her father. He was beating her. He was not providing her proper food or clothes. He was harassing and causing mental torture to her. He wrote several letters Exs. P-26 to P-34. She used to complain to her parents and brother about the cruel treatment by her husband.

4. The appellant pleaded not guilty. His defence is that Manju committed suicide as she felt that she was not able to conceive a child.

5. The Trial Court after appreciation of the evidence on record held that the accused was treating his wife with cruelty in connection with his demand of dowry and abetted the commission of suicide by her.

6. In this appeal it has been argued on behalf of the appellant that the evidence regarding demand of motor-cycle and double-bed is very shaky and unsatisfactory and cannot form the basis for conviction under Section 304B, IPC. It is also argued that the appellant did not abet the commission of suicide by his wife nor treated her with cruelty.

7. The evidence on record has been scanned by this Court. The prosecution case that there was demand of motor-cycle and double-bed by the appellant is not proved beyond reasonable doubt. He is said to have written letters Exs. P-27 to P-34 to his wife but in these letters there is nothing to indicate that there was demand of these two things by him. Deceased Manju wrote letter Ex. P-4 fifteen days before her death to the wife of her brother and in this letter also there is no whisper that there was demand of motor-cycle or double-bed by her husband. Now coming to oral evidence Harnarain (P.W. 1), father of the deceased, does not say that appellant Devkinandan ever demanded motor cycle. He also does not say

that his daughter complained to him regarding the demand of motor-cycle. According to his evidence in para 4 the father of the appellant had suggested to him to give a motor-cycle to his son-in-law but the father of the appellant has been acquitted by the Trial Court on the ground that the charges are not proved against him. Kamlesh (P.W. 5), brother of the deceased has stated that the appellant had demanded the motor-cycle before the marriage but he does not say in examination-in-chief that he made any such demand after the marriage. In cross-examination he says that the appellant had repeated this demand after the marriage also but this does not find place in his statement Ex. P.D-3 under Section 161, Cr.PC. It is only Kasturibai (P.W. 6) who has stated that her daughter Manju told her that her husband and his parents are demanding motor-cycle. If this had been true she would have immediately disclosed to Harnarain (P.W. 1) and Kamlesh (P.W. 5) that Manju is telling that there is demand of motor-cycle by the appellant. The evidence of Kasturibai (P.W. 6) on this point is not satisfactory. Therefore, it is held that there is no reasonable proof that there was demand of dowry by the appellant. He must be acquitted of the charge under Section 304B, IPC.

8. After scrutinising the entire evidence dispassionately this Court is of the opinion that the appellant was subjecting his wife to mental cruelty,

9. The letters Exs. P-27 to P-34 are undisputably written by the appellant. Ex. P-27 letter is dated 9-11-1986 written by him to Manju's father in which it is mentioned-- 'your only beloved daughter' is harassing and threatening to commit suicide. Ex. P-28 letter is dated 12-2-1987 in which the appellant writes to his wife that he ^vius flj ij dQu ck/k dj ?kwerk g SA** He cannot come to the house of her father and she should not talk to her parents about his conduct. Ex. P-29 letter is dated 19-5-1987 in which he has written that he has come to know of her activities on 8-5-1987-- &^vki T;knk le>nkj rFkk Lora= gSa]nsodhuUnu rks fnuksa&fnu; mtkys ls va/ksjs dh vksj tk jgk g SA**

In the letter dated Ex. P-30 which is undated he has written that he would not allow her brother to enter into his house nor he himself would go to his house. Similarly in the letters Ex. P-31, dated 1-9-1986 and Ex. P-33, dated 9-2-1987 he has used

various adjectives for his wife and warned her of his aggressive nature. Ex. P-4 letter was written by Manju to her brother's wife fifteen days before her death. She has stated that her husband did not want to send her to her father's house when he came to fetch her and he had to go back. She has written to her father that he should not take any step of a kind which may aggravate the situation and precipitate her relations with her husband. She was so afraid of her husband and was so depressed by his nature and conduct that she was somehow pulling on with him. The outbursts of the appellant in his letters and the tale of woe narrated by his wife in her letter go to show that he was dominating his wife and was treating her as a chattel. His behaviour was definitely abnormal causing mental anguish to her.

10. There is one more letter Ex. P-26, dated 22-6-1987 which has been recovered from the box of Manju on 5-9-1987 on the next day of her death with other letters as per seizure memo Ex, P-12. This letter is not in the handwriting of the appellant but the contents of the letter go to show that it has been written by someone else at his dictation taking precaution that he may deny the authorship of this letter if the occasion so arises. He has written to his wife that he would come to the house of her parents in Village Shahrai 'for the first and last time', she would not go to the house of her parents until he is alive and her relations would not come to his house. She would have to follow his instructions. She would do all the household work and clean the clothes of all the family members. She would not give any reply even if there is no proper behaviour with her and she would work like a mute person. She would have to pay heavy price on failure to follow these guidelines. This letter eloquently shows what kind of man the appellant is and what was his attitude towards his wife. The Trial Court has rightly observed that he was treating his wife like a slave. He was cruel to the extreme. Ex. P-20 is the letter written by the appellant before the marriage and even that exhibits his male chauvinism.

11. Now comes the oral evidence. The testimony of the father, mother and brother of the deceased must be analysed. Kasturibai (P. W. 6) has deposed that her daughter used to complain that she was not getting proper food or bed. She is required to sleep on the ground. Similar is the deposition of her brother Kamlesh (P.W. 5). She was being remarked 'what she has brought from the house of her

father'. All the three witnesses have deposed that the appellant never went to the house of Manju to bring her to his house and all the time her father or brother used to bring her and take her back. The conduct of the appellant must be examined in the social setting in which he was living. The wife could not go to the house of her father alone. The conduct of the appellant shows that he was exhibiting his male superiority. He was treating his wife and her family members as second rate citizens.

12. From the documentary and oral evidence it is fully established that the appellant was subjecting his wife to mental cruelty. His conduct was of such nature as was likely to drive his wife to commit suicide and such a conduct was wilful within the meaning of Section 498A, IPC. There was reasonable nexus between the mental cruelty and the suicide. It was of sufficient gravity which could lead any woman placed in the circumstances in which Manju was to commit suicide. She was being continuously harassed and tortured mentally. It was not a case of an ordinary jar and jerks or incompatibility of temperament. The behaviour and attitude of the appellant were abnormal. The life of his wife had become miserable and that is the reason she brought an end to her life.

13. The Explanation (a) to Section 498A specifically includes mental cruelty within the ambit of 'cruelty'. Causing mental torture to a wife to such an extent that it becomes unbearable would amount to cruelty. The husband should behave and conduct himself in the same manner which he expects from his wife. He should not exhibit male chauvinism and treat his wife like a chattel or slave. If he does so he would be guilty of cruelty under Section 498A, IPC. The Supreme Court has held in *Pawankumar v. State of Haryana*, AIR 1998 SC 958, that cruelty or harassment need not be physical. Even the mental torture in a given case would be a case of cruelty and harassment within the meaning of Section 498A, IPC. Explanation (a) to Section 498A itself refers to both mental and physical cruelty.

14. In the present case the evidence relating to physical cruelty is not definite and precise but as discussed above the appellant did treat his wife with mental cruelty which drove her to commit suicide within seven years of her marriage and having regard to all the circumstances of the case it must be held that he abetted the

commission of suicide by her. Section 113A of the Evidence Act is fully attracted and the appellant is guilty for the offences punishable under Sections 498A and 306, IPC.

15. The appeal is partly allowed. The conviction and sentence under Section 304B, IPC are set aside and the appellant is acquitted of that charge. His conviction under Sections 306 and 498A, IPC are maintained. The sentence of imprisonment under Section 306, IPC is reduced to five years.

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