

**State of M.P. Vs. Kailash**

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**Court :** Madhya Pradesh

**Decided On :** Aug-10-2004

**Reported in :** I(2005)DMC124

**Judge :** S.S. Jha and ; A.K. Gohil, JJ.

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

**Appeal No. :** Cri. Appeal No. 37 of 1991

**Appellant :** State of M.P.

**Respondent :** Kailash

**Advocate for Def. :** Aizaz Gouri, Adv.

**Advocate for Pet/Ap. :** M.P.S. Bhadoria, Public Prosecutor

**Judgement :**

**S.S. Jha, J.**

1. This appeal is filed against the acquittal of respondent for an offence under Section 302, I.P.C. and Section 498A, I.P.C.

2. According to the prosecution, deceased Mamta was burnt on 29.1.1987 at her house. She was admitted to the District Hospital, Shivpuri, where she died 10 days after the incident on 9.2.1987. She remained in Hospital for 10 days. It is alleged

that respondent has beaten his wife Mamta and burnt her by pouring kerosene oil upon her. After burning Mamta she was pushed out of the room where the wife of her husband's elder brother and aunt have extinguished fire by pouring water on her body and she was sent to the District Hospital where she died on 9.2.1987,

3. There is no eye-witness to the incident. Prosecution case rests upon the oral dying declaration. P.W. 1 Ramavtar has deposed that the deceased remained unconscious for 3-4 days and thereafter she regained consciousness. When she regained consciousness at that time this witness Ramavtar, his father Mangilal, respondent Kailash and Kailash's sister-in-law were present. Deceased told him that she was beaten and burnt by Kailash. However, P.W. 2 Mangilal has deposed that deceased gave oral dying declaration to him when no one was present on the spot. Ramavtar has deposed that the dying declaration was given between 12.00-1.00 O'clock in the night. Mangilal has deposed that time of dying declaration was 2.00 a.m., whereas P.W. 3 Parvati Bai has deposed that in the afternoon when she was alone oral dying declaration was given by the deceased. Shakuntala has given similar statement. Oral dying declaration of these witnesses does not corroborate each other. Even otherwise it is stated that the deceased was beaten and thereafter burnt, but this fact is not corroborated by medical evidence. P.W. 6 Dr. A.P. Srivastava, performed the post-mortem and P.W. 7 Dr. D.K. Bansal has deposed that post-mortem was performed before him. MLC report of deceased is Ex. D-8, which was proved by D.W. 4 Dr. C.P. Tiwari. In Ex. D-8 only burn injuries are mentioned and injuries on the body of deceased were not found. Thus, oral evidence about beating by respondent Kailash to deceased is not corroborated by medical evidence. In her case diary statement before police deceased has mentioned that her clothes caught fire while cooking food on stove. Witnesses have not deposed a word about demand of dowry against the respondent. In the said facts of the case Trial Court has acquitted the respondents.

4. As discussed above and in view of conflicting evidence on record, we do not find that Trial Court has taken perverse view. Reasons for acquittal assigned by the Trial Court are proper and based upon the evidence on record. No case is made out for interference. Accordingly appeal is dismissed. Bail bonds and sureties of respondent are discharged. Respondent is in jail, he shall be released

forthwith, if not required in any other case.

5. On going through the record we find that the police officers were of the opinion that no case is made out against the respondents, yet challan was filed and false case was lodged against the respondents. This fact is further clarified from the deposition of Dr. C.P. Tiwari, who has examined the deceased and Hotilal D.W. 3, who at that time was holding the post of Head Constable and has recorded the statement of deceased Mamta in the Hospital, which is Ex. D-2. He has stated that he has recorded the statement as stated by the deceased before him. Thus, even the police officer from the investigating team has mentioned in the Court that statement was recorded and statement Ex. D-2 does not allege any allegation against the respondent. R.D. Mishra, P.W. 12, was holding the post of Dy. Superintendent of Police, Ghatigaon on the date of deposition and was holding the post of Dy. Superintendent of Police, Shivpuri at the time of investigation. He has deposed that he has recorded the statement of Mangilal, father of Mamta, mother Parvati, brother Ramavtar and elder sister Shakuntala. He has admitted that he has not filed the statements recorded before investigating the Marg and he could not explain the reasons why the statements were not filed in the Court. This shows that this officer was not only negligent but has also wilfully suppressed the documents in order to bring false case against the respondent. The discrepancy in the statements of the witnesses itself discloses that the statements of the witnesses were not correctly recorded by the police officers and they have not even cared to scrutinise the evidence and produce the doctor in Court. Statements which have been recorded and are not corroborated itself disclose that investigation was not only improper and faulty but challan has been filed with intention to implicate respondent falsely.

6. Considering the facts of the case these officers R.D. Mishra and Head Constable Hotilal are liable to be prosecuted for bringing a false case against the respondent. Appropriate challan be filed by the investigating agency against the concerned police officers and action of filing challan and further investigation be intimated to this Court within one month from the date of communication of the order. Copy of the judgment be sent to Director General of Police, Bhopal and Inspector General of Police, Gwalior for action against the concerned police

officers.

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