

Kanhai and anr. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-23-2000

Reported in : 2000(4)MPHT277

Judge : A.K. Mishra, J.

Acts : [Evidence Act, 1872](#) - Sections 113A; [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 304B, 306 and 498A

Appeal No. : Criminal Appeal No. 440/89

Appellant : Kanhai and anr.

Respondent : State of M.P.

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : S.C. Datt, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Mishra, J.

1. Appellants have been convicted for an offence under Sections 498A and 306, IPC and sentenced to undergo R.I. for three years on each count. Both the sentences were ordered to run concurrently.

2. Dead body of wife of appellant Kanhai was found in a well on July 2nd, 1987 at village Madawanmar. Marriage of the deceased was performed with Kanhai prior to 4 to 5 years. Prosecution alleged that the accused Kanhai, mother-in-law Harhuwawali and Munna, brother of Kanhai used to quarrel with the deceased and harassed her. On the date of incident also quarrel took place in the family. Accused Kanhai had slapped the deceased. In the evening deceased jumped into well along with infant daughter and committed suicide. Deceased Ramkali as well infant daughter's dead bodies were recovered from a well. Spot map Ex. P-14 was prepared. Post-mortem was performed by Dr. J.C. Lohrat. Cause of death was found to be asphyxia owing to drowning.

3. Accused persons abjured the guilt and it was contended that the marriage took place prior to 12 years of the date of incident. Ramkali had gone to well to bring water. She had fallen in the well accidentally and was not treated with cruelty.

4. Learned counsel for the appellant has submitted that the presumption under Section 113A of the Evidence Act was not available and has been wrongly drawn. He has further submitted that it has not been proved that the deceased committed suicide. Until unless there is evidence of suicide, conviction under Section 306, IPC cannot be recorded. There is no evidence of abetment of suicide. In his submission, the necessary ingredients constituting abetment are missing from the evidence. There is no positive act which may show that the appellants were responsible for abetting commission of suicide if any.

5. Learned counsel for the State has submitted that it is a case where presumption under Section 113A of the Evidence Act is clearly attracted as death took place within 7 years of marriage.

6. It is a case of suicide. Deceased jumped in the well alongwith infant daughter. He has further submitted that there is circumstantial evidence that there was dispute in the family, even on the date of incident. There was quarrel and deceased used to be harassed. Presumption under Section 113A of the Evidence Act is retrospective in operation, since it is a procedural provision as held by Supreme Court in case of Gurbachan Singh v. Satpal Singh and Ors. (AIR 1990 SC 209). Presumption under Section 113A of the Evidence Act is rebuttable. For

attracting presumption under Section 113A it is necessary that the commission of suicide should be proved and should also be proved that the marriage took place within 7 years and Court shall have due regard to all other circumstances of the case, to find whether suicide was abetted by her husband or such relative of her husband.

7. Prosecution has examined various witnesses. Tribhuwan Prasad (P.W. 1) being a neighbour, ultimately did not support the prosecution case, but, there are certain circumstances which are borne out from his deposition. He has deposed in Para 2 that he had asked Jalam Choukidar to go and check what was happening in the house, on that Jalam had gone and reported to him that: there was some 'BAATCHEET', meaning thereby that there was some dispute going on in the house, which was the cause for the witness to ask Jalam Choukidar to check what was happening in the house. In Para 5 he has clearly deposed that at the relevant time he had scolded Kanhai from his own house and had asked Kanhai to send back deceased to her parental house, in case he was not willing to keep her. This part of the deposition of the witness is clinching and goes to show that deceased used to be harassed by Kanhai and this witness had intervened and had advised accused Kanhai to send back the deceased to her parental house. In the absence of cruel behaviour there was no such occasion for this witness to scold Kanhai and ask him to send back the deceased to her parental house.

8. P.W. 2 Chouda has also stated that there was altercation between the mother-in-law and deceased, though witness did not support the case of MARPEET and was declared hostile. Witness had resiled from his police statement. However, has stated that same night Ramkali jumped in the well.

9. P.W. 3 Badi Bahu has also stated that the day on which Ramkali died in the well she had heard noises from the house of the accused including the voice of deceased. She heard the cry of Ramkali while she was weeping.

10. It is tyrannical that P.W. 4 Mansingh another neighbour of the accused also turned hostile. He stated his ignorance even to the fact whether Ramkali was dead or alive, which he is supposed to know being neighbour. Obviously, his deposition is of no value.

11. Bhura (P.W. 5) has also stated that he had seen altercation going between Ramkali deceased and her mother-in-law. This witness has stated that Kanhai's father informed that Ramkali died in the well. This witness has not stated that Kanhai's father had informed him that Ramkali had fallen accidentally into the well.

12. Gumna (P.W. 6) has also deposed that the dispute was going on between deceased Ramkali and mother-in-law regarding the household affairs. At that time accused Kanhai was also in the house. Same day Ramkali died in the well. Thus, out of the aforesaid witnesses none has stated that the deceased died accidentally. On the contrary their deposition appears to be that deceased died by jumping into the well.

13. Prosecution has examined the brother of deceased Bhagirath (P.W. 7). He has clearly deposed that the marriage took place about 4-5 years prior to the date of incident when Ramkali came to the house she had informed that she was harassed by husband and mother-in-law. On account of this beating she was not sent back to in-laws house for 1 and 1/2 years and thereafter accused Kanhai and his brother came to take her, but, still deceased was not sent owing to ill treatment meted out to her at in-laws' house. Thereafter accused Kanhai's elder brother came to take her and assured that no further ill treatment would be meted out to her. On that assurance the deceased was sent to the husband's house. After about 5-6 months when he went to take her sister to parental house the accused refused to send her with him. Deceased informed him that she used to be harassed, beaten and ill treated. When he insisted for taking his sister along with him, accused Kanhai ran after him in order to beat him. After 2-3 months Ramkali jumped and died in the well. At the time of marriage the age of Ramkali was 10-12 years. He has further stated that no Panchayat was convened regarding ill treatment nor any report was lodged.

14. Jalam (P.W. 8) village Kotwar has stated that he was asked by Tribhuwan a teacher to check what was happening in the house as noise of quarrel could be heard from the house of accused. He went to the house and asked mother-in-law and the deceased not to quarrel. Deceased Ramkali was weeping at that time. Kanhai was also at the house. Witness had resiled in part from his police

statement.

15. Santu (P.W. 9) has stated that the marriage of Ramkali took place prior to five years with accused Kanhai. Santu was also declared hostile as he repudicated his police statement.

16. Bhagirath (P.W. 7) was not cross-examined on the point that marriage took place prior to 4-5 years. So also Santu was also not cross-examined that marriage took place about 5 years prior to the date of incident. Cross-examination is not a mere empty formality of procedure, but, is a matter of substance. Parties are required to put their version in the cross-examination of the witness and obtain an explanation, as held in AIR 1945 NAGPUR 60, AIR 1940 PATNA 683, AIR 1961 CALCUTTA 359, AIR 1950 NAGPUR 83, AIR 1958 PUNJAB 440 and AIR 1963 SC 1906. Thus, the statement of this witness has gone unchallenged to fact that marriage took place about 4-5 years prior to the date of incident.

17. Dr. J.C. Lohrat (P.W. 10) has stated that deceased had died owing to asphyxia due to drowning. Kashiram (P.W. 11) village Patwari has clearly stated that the deceased had committed suicide, but, he was not aware what was the reason of commission of suicide. No rope or bucket was found at the well. Thus, there is no difficulty in coming to the conclusion that the deceased committed suicide by jumping into the well.

18. It is also proved that marriage took place about 4-5 years prior to date of incident. Further it is clear that the deceased used to be ill-treated owing to which deceased had to reside in her parental house for a period of 1 and 1/2 years and she was sent only on an assurance that she would not be ill-treated in future, but, promise was broken soon and again she was subjected to cruelty, harassment and there is evidence on record to show that the harassment was to the extent that even villagers had to intervene in order to subside the quarrel. Tribhuwan had even scolded accused Kanhai and ask him to send back the deceased to her parental house in case he was not willing to keep her, which goes to show that the deceased was ill-treated. There is evidence on record to show that she was immediately before death subjected to cruelty. She was weeping and others had to intervene to save situation. The behaviour was such that deceased had to even

reside in her parental home for 1 and 1/2 years and was also asked to be sent back to her parental house, which goes to show that the deceased was subjected to consistent cruelty. She was under constant threat. There is evidence that when her brother had come to take her back she was not sent by accused and her brother was ill treated and accused ran behind him to beat. Finding no way out she appears to have jumped into the well along with her infant daughter. It appears that she never wanted to leave her infant daughter with accused persons as she had no hope that accused would look after her infant daughter. That appears to be the reason why she had jumped into the well along with her infant daughter, both of them died in the well.

19. Learned counsel for the appellant has relied on a decision of the Apex Court in case of Meka Ramaswami v. Dasari Mohan and Ors. (AIR 1998 SC 774). That was a case under Section 304B, IPC, a case of dowry death, but, no evidence was led to show that dowry was demanded. A letter was written by the deceased to her friend in which no complaint of demand of dowry was made. In that view of the matter the Supreme Court has not interfered with the acquittal. No sustenance can be drawn from the facts and circumstances of the decision in question cited at Bar.

20. Learned counsel for the appellant has also heavily relied on a decision of the Supreme Court in case of State of Himachal Pradesh v. Nikku Ram and Ors. (AIR 1996 SC 67) to contend that there is lack of evidence to show that behaviour of the appellant constituted cruelty within the meaning of Section 498A, IPC. In the said case the trial Court found that none of the accused could really be said to have abetted the suicide as per the definition of abetment in Section 107 of the IPC. In Para 16 of the said decision it has been observed that since the evidence with respect to demand of dowry was not convincing the witnesses were disbelieved.

21. Other decision relied on is 1990 Cr.LJ 407 (Smt. Sarla Prabhakar Vaghmare v. State of Maharashtra and Ors.) in which it has been held that it is not every harassment or every type of cruelty that would attract offence under Section 498A, IPC. Beating and harassment has to be with a view to force her to commit suicide. Section 498A, IPC may be extracted below :

'498-A. Husband or relative of husband of a woman subjecting her to cruelty.--

Whoever, being the husband or the relative of the husband or 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.'

22. Counsel has also relied on the decision in case of Nawal Kishore Jagannath Prasad v. State of M.P. (1999 MPLJ Vol. I page 167) wherein it has been held that the father had stated that the deceased complained about harassment to her mother who in turn informed about the same to him. Obviously, therefore, the statement regarding harassment to the deceased was held to be not based on the information given by the deceased herself.

23. 'Cruelty' as defined in Section 498A, IPC has two facets independent of each other. First is wilful conduct which may drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. The other facet deals with the harassment with a view 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. It is not necessary so as to constitute cruelty within the meaning that harassment must accompany unlawful demand for any property or valuable security. Explanation (a) is clear enough to take into its ambit, the case of wilful conduct which may drive a woman to commit suicide.

24. The circumstances adumbrated in the case clearly make out that the deceased was subjected to utmost cruelty. Matrimonial house is not a place of torture, but, it is a place where dreams are to be fulfilled. A girl leaves the parental house in order to start the life afresh, but, in the instant case she was continuously ill-treated and was ultimately driven to commit suicide. Even after the assurance of no ill treatment, ill treatment was given and enmity increased after the deceased was brought back from the parental house and she was not allowed to visit her parental house again, which goes to prove that deceased was mentally harassed and was subjected to cruelty. Several witnesses have deposed as to the intervention. Their part of deposition mentioned above goes to show that the deceased was not being treated properly and on day of death also was treated with cruelty. The circumstances in which deceased was put go to show that she was left with no hope of respectable happy living. The act of accused clearly amounts to abetment of suicide under Section 306, IPC and cruelty under Section 498A, IPC. Thus, offence under Sections 306 and 498A, IPC has been rightly found to be committed by the accused appellants. The sentence imposed calls for no leniency.

25. In the result the appeal is without any substance and is dismissed.