

Rajkumar and ors. Vs. State of M.P.

Rajkumar and ors. Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/511749

Court : Madhya Pradesh

Decided On : Mar-10-2006

Reported in : I(2007)DMC638

Judge : R.K. Gupta, J.

Appellant : Rajkumar and ors.

Respondent : State of M.P.

Disposition : Appeal allowed

Judgement :

R.K. Gupta, J.

1. The appellants have filed this appeal against the order of conviction passed by the Additional Sessions Judge, Betul in Sessions Trial No. 21/ 2004 dated 22.7.2004 convicting the appellants under Section 306 of the Indian Penal Code and sentencing them to 10 years' R.I. and a fine of Rs. 2000 in default 2 months' additional imprisonment and further convicting them under Section 498A of the Indian Penal Code and sentencing them to 3 years' R.I. and a fine of Rs. 500 each; in default 1 month's additional imprisonment; both sentences to run concurrently.

2. All the accused persons were tried for offences punishable under Sections 498A and 304B of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. The learned Trial Court in para 27 of its judgment has recorded a definite finding that the appellants have not demanded any dowry and the death, as such, has not resulted because of any demand of dowry. Thus, the learned Sessions Judge has convicted the appellants for offence punishable under Section 498A and also under Section 306 of the Indian Penal Code.

3. According to the prosecution story, the appellant No. 1 Rajkumar married to deceased Smt Mamta Bai on 9.5.2002. Subsequently, the appellants started demanding dowry from the parents of the deceased Mamta Bai and accordingly a demand for motor-cycle and Rs. 10,000 was submitted. For non-payment of the aforesaid, the accused persons started torturing the deceased and because of torturing the deceased committed suicide on 17.11.2003 by consuming the sulphas. On the basis of the information, the offence was registered against the appellants and they were also arrested. All the accused persons pleaded not guilty, therefore, after framing of charge, they were tried.

4. In the present case main prosecution witnesses are PW-2 Guntabai and PW-3 Sitaram. These two witnesses are the parents of the deceased Mamta Bai. PW-7 Bhura is another witness who is the neighbour of PW-3 Sitaram. The learned Sessions Judge recorded a finding that though the accused persons did not place any demand for dowry, therefore, accordingly no charge for demand of dowry is proved but the learned Sessions Judge proceeded with the matter under Section 498A read with 306 of the Indian Penal Code as the death of Smt. Mamtabai was found to be way of committing suicide being an unnatural death. The learned Sessions Judge further proceeded that because of the torturing by the appellants, Smt. Mamtabai was persuaded to commit suicide, therefore, the appellants were held to be guilty of an offence punishable under Sections 306 and 498A of the Indian Penal Code.

5. On the perusal of the judgment passed by the learned Court below it is to be seen whether there had been any evidence to prove the torturing soon before the incident of suicide i.e. 17.11.2003 by the accused persons. In this regard the

statement of PW-2 Guntabai who is mother of deceased, is relevant. She has stated in her statement that after the marriage accused Rajkumar used to beat her daughter Mamta Bai who is wife of Rajkumar. She has further stated that marriage was performed according to Hindu rites on 9.5.2002. She further stated that when delivery was due to Mamta Bai then Mamta Bai was sent to her parents house, where Mamta Bai delivered a son. The aforesaid witness further states that Rajkumar used to visit her house i.e. the house of in-laws. She also admitted that Rajkumar and Mamta Bai used to meet and Rajkumar used to make a request that he may be permitted to take Mamta Bai to his house. She has also stated that Rajkumar visited thrice but deceased Mamta Bai was not sent to her in-laws' house along with Rajkumar. She further stated that the sister of Rajkumar, Rekha, has taken out all the jewellery. She also stated that when deceased Mamta was not sent with Rajkumar, then Rajkumar threatened for the dire consequences. In her statement, she further stated that Mamta informed her that she is not given food properly and after giving her food by the appellants a lock was put on the door so that deceased Mamta may not be able to go out of the house. The cross-examination of this witness is to be seen. During the cross-examination, this witness in para 19 of her statement has stated that while giving the statement to the police under Section 161 she has not informed that no proper food was given to deceased Mamta and she has also not stated to the police that food used to be given from outside and thereafter the lock on the door from the outside was put so that Mamta may not be able to go out of the house. This part of her statement shows that story of torturing is improved in the Court.

6. Prosecution has examined Sitaram as PW-3 who is father of deceased Smt. Mamta Bai. He has also virtually narrated the same set of story in the same manner as narrated by PW2 Smt. Guntabai. In para 2 of his statement, he has stated that no proper food was given to Mamta and the lock was also put from outside the door. In para 19 of his cross-examination, he has stated that he was having good relations with in-laws of deceased Smt. Mamta Bai and the father of accused No. 1. He has not stated in the statement given by him to the police that Rekha has taken out the jewellery from the deceased Mamta.

7. PW-7 Bhura is another witness. This witness is the neighbourer of Sitaram. He states that when Mamta used to visit the village i.e. at the house of her parents then she used to weep, and say that she has not been married at a proper place. He states that Rajkumar has taken out the jewellery from Mamta. He also confirms the story that Rajkumar has threatened that in case Mamta comes to his house, then she will not come alive to her parents house.

8. In this reference, it would be necessary to see certain documents which were relied upon by the prosecution. These documents are three letters written by accused/appellant No. 2 Hari to PW-3 Sitaram. These letters are Exhs. P-5-C. P-5-D and Ex. P-6. On the basis of these letters it is clear that every time a request by accused/appellant No. 2 was made to PW-3, the father of the deceased that Mamta may be sent to her in-laws house. These letters also demonstrate that because of the non-company of Mamta, the mental position of accused No. 1 Rajkumar is deteriorating and further appellant No. 1 has also started behaving abnormally. Therefore, every time the letters were sent to Sitaram P.W.3 by accused/appellant No. 2 making requests to send Mamta in the company of Rajkumar. These documents also do not demonstrate that at any point of time any demand of dowry was ever made by the appellants. Apart from this, the story with regard to the demand of dowry of the prosecution has already not been believed by the learned Court below particularly in the light of the finding recorded in para 27 of the judgment.

9. Learned Counsel for the State submitted that since it was the unnatural death of the deceased Mamta Bai within 7 years of her marriage, therefore, an offence against the appellants is made under Section 498A read with Section 306 of the Indian Penal Code due to torturing by the accused persons. As the deceased has committed suicide, therefore, a presumption has to be drawn against the appellants in relation to the cruelty by them and the conduct as such amounts to abetting the deceased to commit suicide.

10. It is submitted that the ingredients of the offence for the purposes of Section 498A of the Indian Penal Code are if the husband or his relatives subject a woman to cruelty within 7 years of the marriage, then there shall be a presumption against

the appellant. So far as the ingredients for an offence punishable under Section 306, Indian Penal Code is concerned, according to this section, if any person commits suicide, whoever abets the commission of such suicide, shall be punishable.

11. Learned Counsel for the prosecution, Mr. T.K. Modh submitted that in the present case there shall be a presumption against the appellants in terms to Section 113A of the Evidence Act, 1872 with regard to the cruelty, therefore, the offence deemed to have been proved of Section 498A read with Section 306 of the Indian Penal Code, even though the Sessions Court has recorded a finding that the accused have not demanded the dowry. The aforesaid submission of the learned Counsel for the State has been refuted by the learned Counsel for the appellants. Learned Counsel for the appellants submitted that merely because accused persons are found guilty under Section 498A, Indian Penal Code that by itself would not be necessary to hold the appellants guilty under Section 306 of the Indian Penal Code, on the basis of the same set of evidence.

12. To substantiate the said proposition, Counsel for the appellant relied upon the judgment passed by the Apex Court, reported in *Ramesh Kumar v. State of Chhattisgarh IV* (2001) CCR 178 (SC) : 2001 (4) RCR (CrL) 537. The Apex Court while considering the aforesaid situation, laid down a ratio that the presumption as available under Section 113A, shall not lead to necessary conclusion that the accused persons are necessarily guilty of an offence punishable under Section 498A and Section 306 of the Indian Penal Code.

13. The Apex Court has also interpreted the meaning and scope of Section 113A of the Evidence Act, 1872 and laid down that the words used in the said section 'may presume' shall not necessarily mean to presume with regard to cruelty or otherwise but that presumption has to be drawn keeping in view the other necessary material brought on record by the prosecution. It is the discretion of the Court to apply under Section 113A with regard to the cruelty but it does not mean that necessarily a presumption has to be drawn against the accused.

14. Another judgment which has been relied upon by the learned Counsel for the appellants is reported in *Hans Raj v. State of Haryana I* : 2004 CriLJ1759 , and

referred to para 13 of the aforesaid judgment. Para 13 of the judgment states that the statutory presumption does not arise by operation of law merely on proof of circumstances enumerated in Section 113A of the Indian Evidence Act, 1872. The Apex Court further held that prosecution first has to establish that the woman concerned committed suicide within a period of 7 years of her marriage and that her husband or his relatives have subjected her to cruelty. Even if these facts are established it is not open to presume that the suicide has been persuaded by her husband.

15. The aforesaid test if is applied then it has to be seen whether any presumption necessarily could be drawn for committing an offence under Section 306 and also of Section 498A of the Indian Penal Code. It may be seen in the evidence of PW-2 Guntabai. The evidence of this witness has already been discussed in detail in the earlier paragraph of this judgment and particularly para of her statement where she has herself admitted that she has not informed to the police that there was some torturing in relation to the supply of food to deceased Mamta Bai. She has also stated that she did not inform to the police that the deceased was given food and after giving her food the door used to be locked.

16. The reference to FIR Exh. P-11 shall also be relevant. All these details have not been shown in the FIR but it only states that since there was a demand for dowry, therefore, deceased was tortured. This witness has not explained the actual acts of torturing by the appellant Nos. 2 and 3. It is only stated in the FIR Exh. P-11 that all the three accused persons were raising the demand of dowry. It is also submitted that Rekha sister of accused No. 1 and the daughter of accused Nos. 2 and 3 has taken out all the jewellery from the deceased. Nothing further had been stated with regard to torturing. Nothing further has been stated by this witness i.e. PW-2 Guntabai that at any point of time accused/appellant Nos. 2 and 3 came to her house and demanded for dowry. Nothing also has been stated by her as to the role in relation to torturing by accused Nos. 2 and 3. In this reference the statement of PW-3 Sitaram, father of the deceased and husband of Guntabai is also relevant. In para 19 of his statement he has admitted that whenever he used to meet accused Nos. 2 and 3 every time they had a talk in a very cordial atmosphere and they were having good relations among themselves. So far as

PW-7 Bhura is concerned he has also not stated any particular role in relation to the torturing by the appellant Nos. 2 and 3.

17. In view of the aforesaid, now the question that has to be answered by this Court is whether any presumption under Section 113A can be drawn on the basis of the material on record against the appellant Nos. 2 and 3 with regard to the cruelty or the abetment to commit suicide by the deceased. The incidents which have been narrated by PW-2 and PW-3 are in fact the incidents with regard to abusing and threatening by appellant No. 1 and not by other two appellants. More so, these incidents have occurred in the house of in-laws of appellant No. 1 i.e. in the parental house of deceased Mamta Bai. So far as the letters written by the accused No. 2 as contained in Exh. P-5-C, P-5-D and P-6 are concerned there had also been the intention of accused No. 2 to send Mamta in the company of Rajkumar as Rajkumar started behaving abnormally due to the non-company of his wife. There is no other piece of evidence and the specific role of appellant Nos. 2 and 3. Nothing has been stated by PW-2 and PW-3 as to who used to put the lock on the door so that the deceased Mamta may not be able to go out of the house and further nothing has been stated as to who used to give her food from outside.

18. Thus, keeping in view the entirety of the circumstances as aforesaid the allegation with regard to the cruelty and abetment so far as appellant Nos. 2 and 3 are concerned, there is no material on record to hold these two appellants that they have practised cruelty which has resulted into abetment of deceased Mamta Bai to commit the suicide. It may also be seen that when after deceased Mamta Bai came to her in-laws house from the house of her parents, then what was the actual role played by appellant Nos. 2 and 3 in relation to cruelty. Thus, there is no immediate incident narrated and brought on record by way of an evidence to prove that soon before the incident dated 17.11.2003 there had been some material to demonstrate the acts of the appellant Nos. 2 and 3 to commit act of cruelty and also such other acts by which the deceased has been abetted to commit suicide. The prosecution has not brought on record any particular incident which could be said to be the aspect and material on which basis the victim was subjected to cruelty or harassment in connection with the demand of dowry or otherwise.

19. The evidence which have been brought on record are only incidents much prior to the date of occurrence i.e. 17.11.2003 and keeping in view the aforesaid aspect, the prosecution has failed to make out any case and has also failed to prove any ingredient of the offence punishable under Sections 306 and 498A of the Indian Penal Code against these two appellants, therefore, appellant No. 2 and appellant No. 3 deserve to be acquitted of the said offences.

20. In this reference now the case of Rajkumar i.e. appellant No. 1 is also to be considered. PW-2 Guntabai and PW-3 Sitaram, including PW-7 Bhura, all the three witnesses have consistently stated that whenever Rajkumar came to his in-laws and requested that Mamta be sent along with him to his house then Rajkumar was explained as to why presently Mamta cannot be sent with him. There is evidence of PW 2 that Rajkumar while going back to his house from his in-laws' house has threatened on the road by shouting that whenever Mamta comes to his house then Mamta shall not come alive to her parents-house and in spite of this Mamta was sent to her in-laws' house along with Rajkumar. Apart from this it has also come on record that once Rajkumar appellant No. 1 has also slapped Mamta. These two incidents are sufficient to constitute the acts of cruelty on the part of Rajkumar and when the deceased Mamta Bai was sent to her in-laws' house, all these incidents must be in her mind. These two incidents are sufficient acts of inducement to commit the suicide by deceased Mamta Bai, therefore, the offence against him is proved. Therefore, this is not a case to interfere into the conviction.

21. The next submission of the learned Counsel for the appellant No. 1 is with regard to the sentence. It is submitted that the accused No. 1 was aged about 25 years only on the date when the deceased Mamta has committed the suicide on 17.11.2003. It is also submitted that Mamta before her death has also delivered a child. On the basis of these two considerations it is submitted by the learned Counsel for the appellants that in these circumstances the sentence deserves to be reduced and particularly keeping in view the circumstances that no immediate factum with regard to cruelty by Rajkumar is on record, therefore, the sentence requires to be reduced in terms of the judgment passed by the Apex Court reported in Ramdhir Singh v. State of Punjab IV (2004) CCR 328 (SC) : 2004(4)

RCR(CrL) 740 and also in terms to the judgment passed in Mohd. Hoshan A.P. and Anr. v. State of A.P. 2002(4) RCR(CrL) 155.

22. Keeping in view the aforesaid circumstances as deceased Mamta before her death delivered a child and the age of the appellant No. 1 had been 25 years on the date of incident, it is thus directed that the sentence in place of 10 years for an offence punishable under Section 306, Indian Penal Code is reduced to three years and for an offence under Section 498A, Indian Penal Code for a period of 2 years, both these sentences shall run concurrently. The appeal is accordingly allowed. Appellant Nos. 2 and 3 are acquitted in view of para 17 of this judgment. Appellant Nos. 2 and 3 since are already on bail, therefore, their bail bonds shall stand discharged/cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com