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

State Vs. Virendra Kumar and ors.

State Vs. Virendra Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/754159

Court : Rajasthan

Decided On : Mar-16-2005

Reported in : I(2005)DMC765

Judge : B. Prasad and; Satya Prakash Pathak, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302, 304B and 498A; Evidence Act, 1872 - Sections 113 and 113(B); Code of Criminal Procedure (CrPC) - Sections 161, 313 and 428

Appeal No. : Criminal Appeal No. 106 and 450 of 2001

Appellant : State

Respondent : Virendra Kumar and ors.

Advocate for Def. : P.N. Mohnani,; S.G. Ojha and; J.P. Chhangani, Advs.

Advocate for Pet/Ap. : Vishnu Kachhawaha and; Sandeep Mehta, Advs.

Disposition : Appeal allowed

Judgement :

Satya Prakash Pathak, J.

1. These two Division Bench appeals have arisen out of a common judgment and order passed by learned Additional Sessions Judge No. 1, Jodhpur, in Sessions

Case No. 44/99, as such the same are being disposed of by this common judgment.

2. D.B Criminal Appeal No. 450/2001 has been filed by the State against the judgment and order dated 7.2.2001 of the learned Addl. Sessions Judge No. 1, Jodhpur, whereby accused respondent Virendra Kumar has been acquitted of the charge under Section 302, IPC and the rest of the accused persons viz., Moolchand, Smt. Sunita and Smt. Shanu @ Alka have been acquitted of the charges under Sections 302, 304B and 498A, IPC.

3. D.B. Criminal Appeal No. 106/2001 has been filed by accused Virendra Kumar challenging his conviction recorded by the learned trial Judge under Sections 304B and 498A, IPC whereby the accused-appellant has been convicted and sentenced as under:

Under Section 304B, IPC 10 years rigorous imprisonment and fine of Rs.

1,000/-, in default of payment of fine further to

undergo three months R.I.

Under Section 498A, IPC 3 years rigorous imprisonment and fine of Rs.

500/- in default of payment of fine further to

undergo two months R.I.

The sentences were ordered to run concurrently.

4. It is the case of the prosecution that on 16.7.1999 at about 3.20-3.45 p.m., P.W. 1 Ramesh Chandra father of Smt. Premlata (since deceased, to be referred as 'the deceased') submitted a written report Exh. P/1 in the Police Station, Pratap Nagar, Jodhpur with the averments that his daughter Smt. Premlata was married to accused Virendra Kumar about 4 years ago. Smt. Shanu @ Alka-sister-in-law of the deceased on phone intimated that deceased by hanging herself has committed suicide. After 10 minutes of the above telephone received by P.W. 1 Ramesh Chandra, another telephone as received by him, which was from Smt. Sunita,

mother-in-law of the deceased, who intimated that they should come to the house immediately to take the dead body of the deceased.

5. It was further case of the prosecution that P.W. 1 Ramesh Chandra after the above telephonic conversation, along with his family members and other persons including Ramjiprashad, Sohan Sankhla, Bhanwar Choudhary, etc. rushed to the in-laws house and on reaching there, on the first floor, in a room they found the dead body of deceased hanging with a sari. One end of the sari was tightened with the hook meant for ceiling fan at the roof and the other end of the sari was tightened with the neck of the deceased. A fan was also lying there in the room which was taken out from the hook meant for fixing the ceiling fan.

6. The further case of the prosecution is that on seeing the dead body, it was asked as to how it had happened but no satisfactory explanation was offered by the in-laws. It is also the case of the prosecution that on previous occasion some years back, accused had murdered his earlier wife for dowry. The first wife was also treated with cruelty and she also died an unnatural death. In that episode, accused Virendra, his sister and mother were sent to jail. The prosecution case further is that in the above circumstances it was the apprehension of the father of the deceased P.W. 1 Ramesh Chandra that the accused persons had hanged his daughter and thereby killed her. The accused, his father, mother and sister were regularly making demands of dowry which used to be satisfied by making payment either Rs. 5,000/- per month or Rs. 10,000/- after every alternate months. The deceased was being harassed and dealt with cruelty after one year of the marriage and soon before the incident, a demand for Maruti Car was made. It is further the case of the prosecution that at the time of marriage sufficient gold, silver and several domestic articles such as colour TV, fridge, etc. along with a sum of Rs. 51,000/- (Rupees fifty one thousand) as dowry were given but since the demand of dowry was increasing enormously, it became rather impossible to fulfil the demand, the same might be a cause either for the deceased to have committed suicide or she has been killed.

7. The police, on the basis of written report Exh. P/1 registered FIR No. 248 under Sections 498A and 304B, IPC on 16.7.1999 and a regular FIR Exh. P/27 was

chalked out. During the course of investigation, post-mortem of the dead body was got conducted and after usual investigation challan was filed in the Court of Addl. Chief Judicial Magistrate No. 2, Jodhpur by adding Section 302, IPC along with Sections 304B and 498A of the IPC. The case was committed to the Court of Sessions and from there it was transferred to the Court of Addl. Sessions Judge No. 1, Jodhpur for trial, who after hearing both sides framed charges against the accused respondents under Sections 302, 304B and 498-A of the IPC on 18.9.1999. The accused denied the charges and claimed trial. During trial, the prosecution examined in support of its case 16 witnesses and got exhibited 44 documents. After close of the prosecution evidence, in the statements under Section 313, Cr.P.C. the accused respondents denied the allegations levelled by prosecution and stated that at the time of incident they were not there and have been falsely implicated. In defence, 5 witnesses were produced and 85 documents got exhibited.

8. After conclusion of the trial, the learned trial Judge through his judgment and order dated 7.2.2001 acquitted all the accused persons of the offence under Section 302, IPC but convicted accused Virendra Kumar for the offence under Sections 304B and 498-A of the IPC and convicted and sentenced him as stated hereinabove. The rest of the accused persons have been acquitted completely. That is how the present two appeals have been filed; one by the State against the acquittal and the other by accused Virendra Kumar against his conviction.

9. The learned trial Judge by his judgment and order dated 7.2.2001 has held as under :

(i) That the marriage of the deceased took place 4 years before the incident.

(ii) That the death of the deceased took place at the residence of accused persons where deceased along with accused Virendra Kumar, Moolchand and Sunita were residing. Smt. Alka sister-in-law of the deceased was residing in other house with her husband.

(iii) That the death of the deceased was within 7 years of the marriage. The witnesses have stated that demand of dowry was made, therefore, presumption

was raised under Section 113B of the Evidence Act.

(iv) That the death of the deceased was a dowry death.

(v) That as the feet of the dead body were touching the floor and knees were bent, therefore, the possibility for the deceased to have committed suicide was ruled out.

(vi) That the FSL report disclosed the presence of organo phosphorous insecticide in kidney, liver, etc. of the deceased, the container of the insecticide was not found at the spot but the facts revealed that somebody must have administered poison prior to strangulation.

(vii) That no old injury was found on the body of the deceased to justify the cruel behaviour towards deceased by the accused persons but at the same time that cannot be a reason to disbelieve the testimony of the witnesses that accused Virendra has not tortured the deceased for demand of dowry.

(viii) That the prosecution has not been able to prove its case beyond all reasonable doubts against other accused respondents namely Moolchand, Sunita and Alka for the offence under Sections 304B, 302 and 498-A of the IPC.

10. We have heard both sides and perused the material available on record.

11. The following submissions have been made on behalf of the accused respondents:

(1) That the learned trial Judge has gravely erred in law and facts in convicting accused-appellant Virendra under Sections 304B and 498-A, IPC in the absence of essential ingredients constituting the above offences.

(2) That the learned trial Judge has not correctly appreciated the evidence adduced before it during the course of trial in relation to demand of dowry made by the accused-appellant as the prosecution miserably failed to prove the same.

(3) That the prosecution has not been able to prove by evidence that the deceased was harassed or tortured and soon before the incident there had been a demand

of dowry.

(4) That there is substantial improvement in the statements recorded in the Court and the statements recorded under Section 161 of the Cr.P.C.

(5) That the other accused persons have been exonerated on the basis of same set of evidence which has been relied upon against the accused appellant, therefore, conviction and sentence recorded against accused is also deserved to be set aside.

12. The following submissions have been made by the learned Public Prosecutor appearing on behalf of the State:

(1) That the prosecution has proved by oral as well as circumstantial evidence the charges against the accused persons on the basis of which accused Virendra Kumar has been convicted then how on the basis of same material the other accused persons have been acquitted.

(2) That the prosecution has fully proved its case by evidence of P.W. 1 Ramesh Chandra, P.W. 5 Smt. Shobha, P.W. 7 Kishanlal Prajapat, P.W. 8 Shravan and P.W. 13 Smt. Phoolwanti.

(3) That the learned Trial Court has assigned no reasons for acquitting other accused persons. The learned Trial Court has misread the evidence.

13. We have carefully considered the rival submissions made before us and minutely examined the relevant material available on record.

14. Before proceeding further, relationship of the accused respondents with the deceased must be mentioned here.

Name of accused Relation1. Virendra Kumar Husband2. Moolchand Father-in-law3. Sunita Mother-in-law4. Shanu @ Alka Sister-in-law

15. The Hon'ble Supreme Court in Shanti v. State of Haryana, AIR I (1991) DMC 187 (SC)=1991 SC 1226, had an occasion to explain the ingredients of Section 304B, IPC. His Lordship K. Jayachandra Reddy, as he was then, said that a

careful analysis of Section 304B, IPC shows that this section has the following essentials:

(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.

(2) Such death should have occurred within 7 years of her marriage.

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(4) Such cruelty or harassment should be for or in connection with demand for dowry.

16. What Section 304B, IPC requires is that death of the woman should be unnatural. In the case of Shanti (supra), the Hon'ble Apex Court clearly held that for applicability of Section 304B, IPC question whether unnatural death of a woman was homicidal or suicidal is irrelevant. Section 304B, IPC raises a presumption of culpability against the husband or relative hitherto unknown to our jurisprudence and, the prosecution must prove with some positive evidence that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment.

17. In dowry death and suicide cases, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence which could be direct or indirect. The conduct of husband and other relatives also plays a vital role in coming to the conclusion of the guilt. The decision of Hon'ble Apex Court in Bachan Singh v. Satpal Singh, AIR 1990 SC 209, is on this point.

18. Further, motive for a murder may or may not be. But in dowry deaths, it is inherent. And hence what is required of the Court to examine is as to who translated it into action is motive for it is not individual, but of family. The case of Ashok Kumar v. State of Rajasthan, AIR 1990 SC 2134, may kindly be seen.

19. In view of above settled position of law, now we propose to examine the present matter. It shall be proper to first see as to what is the medical evidence led

in this case. The medical evidence is found in the statement of P.W. 14 Dr. N.S. Kothari. He states that for conducting the post-mortem of the dead body of deceased a Medical Board was constituted on 17.7.1999 and apart from him Dr. Ajay Malviya (Surgeon), and Dr. Smt. Devki Kesyani were members of the Board. On examining the dead body, following injuries were found :

Ligature mark around neck (soft) 38.0 cm. long around the neck and about 19.0 cm. x 2.0 cm. in front of neck, runs oblique upward upto angle of mouth then downward on the left side neck below left ear and back of neck which about 4.0 cm. wide associated with abrasion. There is bruise 4.0 cm. x 2.0 cm. behind right ear and abrasion 4.0 cm. x 1.5 cm. below chin.

In the opinion of the doctors, the cause of death was strangulation. The Doctor Kothari has further clarified the cause of death on being requested through Exh. P/30 by the police that the ligature marks found on the neck of the deceased could be the result of the sari produced before him. Thus, from the post-mortem report Exh. P/29 and the clarification given by the doctor through Exh. P/30 and the statement of P.W. 14 Dr. N.S. Kothari, the fact that the deceased died due to strangulation is established. Hence, the death of the deceased can be assigned as unnatural one.

20. It may be stated here that where death of a woman is caused by burns or bodily injury occurs other than in the normal circumstances within 7 years of the marriage and the evidence reveals that she was subjected to cruelty or harassment by her husband or any of his relatives in connection with any dowry, such death is described as dowry death under Section 304B. By Section 113B of the Evidence Act, the Court has to raise a presumption of dowry death if the same has taken place within 7 years of marriage and there is evidence on the fact of woman having been subjected to cruelty and/or harassment.

21. The point that the death of the deceased took place within 7 years of the marriage is not in dispute. Therefore, the first ingredient of Section 304B has been proved by the prosecution.

22. This fact has also been proved by the prosecution that the deceased died an unnatural death and in the opinion of the doctor the cause of death was strangulation. If that is so, the another essential ingredient of Section 304B of the IPC has been proved.

23. Now, it is to be seen as to what the oral evidence has been adduced in the case and what are the circumstances taken into consideration by the learned trial Judge whereby he acquitted the accused persons namely Moolchand, Smt. Sunita Devi and Alka of the charges under Sections 302, 304B and 498-A of the IPC and convicted only accused, Virendra Kumar for the offence under Sections 304-B and 498-A of the IPC.

24. Before proceeding further, it may be stated here that the learned trial Judge in his judgment at pages 35 to 39 in paras 39 to 41 has admitted that on the basis of evidence it was established that the deceased was harassed and maltreated by the husband but as the other family members have also been involved and there is no specific evidence in connection with accused Alka in relation to demand of dowry or any cruelty against the deceased, therefore, others cannot be held liable. The learned trial Judge has further found that the deceased was living in the house where other accused persons except Alka were living. In para 42 of the judgment he has found that the plea of alibi could not be proved and the plea of the accused Moolchand that there was plaster on his leg and he was on rest at the relevant time was also not found proved as in his arrest memo there was a mention of a crap bandage wrapped on some old injury of his foot which was fortified by the statement of Investigating Officer Sachin Mittal. In para 43 of the impugned judgment, the learned trial Judge has held that the prosecution has led evidence relating to the death of Rachna, earlier wife of accused Virendra, who had been killed by the accused persons for dowry and a challan against the three accused persons namely Virendra, Sunita and Archana under Section 498-A of the IPC was filed. They were sent to jail in that case, though subsequently they have been acquitted by the Trial Court. Leave to appeal has been granted by this Court against accused Virendra and Sunita.

25. In the above circumstances, the conclusion drawn in para 44 of the impugned judgment is that the deceased died in the house where except Alka other accused persons were residing. The death took place in the suspicious circumstances. It has further been admitted that in the dead body of deceased organo of phosphorous insecticide was found. The cause of death was asphyxia due to strangulation. Though no evidence was led by prosecution to prove that the poison was the cause for her death but in view of the evidence of P.W. 14 Dr. M.S. Kothari and also as the death had taken place within 7 years of marriage, the learned trial Judge held accused Virendra guilty for the offences under Sections 304B and 498-A, IPC. In absence of evidence of cruelty, harassment and making of demand for dowry soon before the death, the other accused persons have been acquitted of the charges. In para 45 of the impugned judgment it has been admitted that the deceased had not committed suicide and the case appeared to be one where she was first given poison and thereafter she was hanged because her feet were touching the floor. There were no marks of injury for the struggle of life on the dead body of the deceased, the death of the deceased was in unnatural circumstances.

26. The learned Trial Court at para 47 of the impugned judgment acquitted all the accused persons of the charge under Section 302, IPC for the reason that there was neither direct nor circumstantial evidence to connect the accused persons for the offence under Section 302 of the IPC that they had caused the death of the deceased jointly or individually.

27. In view of above findings recorded by the learned trial Judge, it has to be seen as to what oral evidence has been led by the prosecution. The evidence led by the prosecution may be divided in three sets.

28. The first set of evidence, we take up the evidence in relation to demand of dowry, cruelty/harassment and other circumstances. The relevant evidence in this behalf is of P.W. 1 Ramesh Chandra, who is father of the deceased. This witness has lodged Exh. P/1 the First Information Report, wherein the witness has stated that on receiving two telephonic calls on 16.7.1999 one from accused Alka and other after 10 minutes from Sunita, the mother-in-law of the deceased, he along

with family members and other persons visited the house of the in-laws of the deceased. In Exh. P/1 it has been stated that on reaching deceased's in-law house, on the first storey of the house in a room the dead body of the deceased was found in hanging position. The neck of the deceased was tightened with a sari and the other end of the sari was tightened with a hook at the roof meant for fixing a ceiling fan. It has also been stated in Exh. P/1 that when inquiries were made regarding the cause of death, nothing was explained satisfactorily. The witness apprehended that either she had been killed for dowry or she might have committed suicide. The accused previously also has killed his wife. According to the witness, at the time of marriage sufficient dowry was given including 22 totals of gold, colour TV, fridge and Rs. 51,000/- in cash as dowry. Since after one year of the marriage there was continuous demand from the side of in-laws, as such after every month a sum of Rs. 5,000/- or at the intervals of one month a sum of Rs. 10,000/- was being paid. A year before the incident, a Kawasaki-Bajaj Motorcycle was also arranged for the accused but as the demands were increasing gradually and it became impossible for them to fulfil, so it may be the result that either the deceased committed suicide herself or she was killed. In the Karwahi Police, on inquiry, the witness informed that the accused and his family members were harassing and torturing the deceased for dowry. Statement of this witness Exh. D/1 was recorded by the police on 16.7.1999 itself wherein the witness has reiterated the version made in Exh. P/1 and the witness has also stated that there was continuous demand of dowry and soon before the death there had been a demand of Maruti car. In the statement, the witness has stated that cash was arranged for the purchase of motorcycle after borrowing the same from witness P.W. 3 Sampat Singh. The attack, during the course of argument was that P.W. 3 Sampat Singh has not stated that the amount was borrowed from him by P.W.-1 Ramesh to provide motorcycle to accused Virendra. It appears that the witness has not stated about the lending of the money but at the same time nothing has been asked during the course of cross-examination that as to whether any amount was landed (lent) on loan to the father of the deceased for the purchase of motorcycle for which a demand alleged to have been made by the accused persons.

29. Be that as it may, as the position of law is settled that in dowry death cases for dowry cruelty or harassment should be for or in connection with dowry soon before the death and the death must have taken place within 7 years of the marriage in suspicious circumstances then presumption under Section 113B of the Evidence Act is liable to be raised against the culprits.

30. The another witness is P.W. 5 Smt. Shobha, the mother of the deceased. Police also recorded her statement as Exhibit D/74 on 16.7.1999. She has supported the version of P.W. 1 Ramesh Chandra. In Exhibit D/74, a demand in relation to Maruti Car, which was made soon before the death, finds place. Both the witnesses have been examined at length which is running into several pages. In our view, presumption would be available under Section 113B of the Evidence Act, when it is established that the death was within 7 years of the marriage under suspicious circumstances and soon before the death demand of dowry was made and the deceased was tortured. Once the above factum is established then it is required of the accused persons to furnish satisfactory explanation for the unnatural death of deceased particularly in the circumstance when the death took place in their house. P.W. 8 Shravan and P.W. 13 Smt. Phoolwanti are the other witnesses in this regard, who also corroborates the prosecution version completely.

30-A. In the second set of evidence, which is in relation to recovery, Panchnama of the dead body, inquest report, site-plan, Fard Jabti Sari, etc., the prosecution has examined P.W. 2 Govind Ram, P.W. 3 Sampat Singh, P.W. 4 Narpat Singh Bhati and P.W. 6 Shreeram Prajapat. Nothing adverse has come in the cross-examination of the above witnesses to disbelieve their testimony.

31. In the third set, the prosecution has adduced the medical evidence. As discussed above, P.W. 14 Dr. N.S. Kothari has proved Exh. P/29 Post-mortem Report and Exhibit P/30 is his clarification with regard to the injuries found on the person of the dead body. The other witnesses are regarding search and seizure of articles sent to FSL, P.W. 15 Sachin Mittal and P.W. 12 Hazariram are the witnesses who have investigated the matter. P.W. 11 Rajaram is the photographer who has proved photographs Exhibit P/5 to Exhibit P/20.

32. The accused persons have examined 5 witnesses in their defence but their evidence is not of any significance because witnesses of defence have stated that they have treated the deceased either at the time of pregnancy or for weakness etc. The defence evidence nowhere is to the effect that the deceased was suffering from any serious disease or ailment which could have compelled her to commit suicide.

33. Thus, from the statement of P.W. 1 Ramesh Chandra, P.W. 5 Smt. Shobha, P.W. 8 Shravan and P.W. 13 Phoolwanti, it clearly appears that there is overwhelming evidence on the point that the deceased was being tortured and harassed by her mother-in-law, father-in-law and the accused Virendra Kumar. The evidence in relation to accused Alka is not sufficient to raise a presumption against her under Section 113(b) of the Evidence Act for the offence under Section 304B of the IPC.

34. The finding of the learned trial Judge that it was only the accused Virendra Kumar who is responsible for the death of the deceased and not the other accused persons, in our humble opinion, is not a correct conclusion drawn of the evidence led by the prosecution. We are conscious of the fact that in matters where appeals against acquittal is under consideration then Court should be slow to interfere with the acquittal recorded by the Trial Courts.

35. The principles which govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the Trial Court have been set out in innumerable cases by the Hon'ble Supreme Court. In the case of Ajit Sawant Majagavi v. State of Karnataka, AIR 1997 SC 3255, the Hon'ble Supreme Court laid the following principles :

(i) In an appeal against an order of acquittal, the High Court possesses all the powers and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(ii) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by Trial Court, if the said findings are against the weight of the evidence

on record, or in other words, perverse.

(iii) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribed to the view expressed by the Trial Court that the accused is entitled to acquittal.

(iv) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the Trial Court.

(v) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(vi) The High Court has also to keep in mind that the Trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court, especially in the witness box.

(vii) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such that a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

36. Keeping in view the above principles, the findings which have been recorded by the learned trial Judge so far as it relates to accused Moolchand and Sunita for the offence under Sections 304B and 498-A, IPC are concerned, we are reversing because the learned trial Judge came to the conclusion of guilt against accused Virendra Kumar and on the very same set of evidence disbelieved the same evidence in relation to the father and mother of the accused who were also residing in the same house and there had been continuous harassment and demand of dowry soon before the death of the deceased as would appear from the statement of P.W. 1 Ramesh and F.W. 5 Shobha and other witnesses of the prosecution as has been discussed hereinabove.

37. We are also of the opinion that the evidence led by the prosecution is not sufficient to hold accused persons liable for offence under Section 302 of the IPC. The evidence adduced by the prosecution during the course of trial for offences under Sections 304B and 498A, IPC is reliable and trustworthy against Moolchand and Sunita. The prosecution has been successful in proving the ingredients of Sections 304B and 498A, IPC in this case, therefore, presumption against accused Moolchand and Smt. Sunita under Section 113B of the Indian Evidence Act is required to be raised.

38. As stated hereinabove, in dowry death and suicide cases circumstantial evidence plays an important role and an inference can be drawn on the basis of such evidence, that can be direct or indirect. In this respect, the conduct of accused persons becomes relevant. The accused persons took the plea of alibi, which they miserably failed to prove. The circumstances that the accused did not inform police about the incident, dead body was found in suspicious circumstances hanged (her neck tightened by the one end of Sari and the other with the hook meant for fixing a ceiling fan on the roof of the room), and the feet of the dead body were touching the floor, gives an impression that first the victim was given poison and thereafter hanged.

39. The attack of learned Counsel during the course of argument that the room from where the dead body was found, was closed, has no legs to stand because in the photographs we find a window in the room and if that is so then possibility of entering somebody in the room cannot be ruled out. The position in which the dead body was found as discussed above clearly indicates that after administering poison when she became unconscious she was throttled to death and was hanged so that at the first sight it may appear a case of hanging but there are no sign of struggle for life which normally appear in the cases of hanging. It is unbelievable in the circumstances when feet of the dead body were touching the flour of the room then it is difficult to presume that she committed suicide. The container of the poison was also not found in the room. Had she taken the poison herself then the container of the poison definitely would have been there. Thus, it appears to us that in a planned way deceased has been murdered.

40. In the present case, the evidence of P.W. 1 Ramesh and P.W. 5 Shobha and other witnesses clearly indicates the greedy nature of accused respondents. It shall not be out of place to mention here that though the accused persons have been acquitted of the charge under Section 498A by the Trial Court in the matter where accusation was that accused persons were responsible for the death of Archana duly wedded previous wife of accused Virendra against which leave to appeal has been granted by this Court and is pending. The present incident has also happened exactly in the same manner as it was in the case of the previous wife of accused Virendra.

41. Be that as it may, taking into consideration, all the circumstances and on the basis of material available on record, it can easily be said that the findings of the learned trial Judge acquitting the accused persons namely Moolchand -father-in-law of the deceased and Sunita - mother-in-law of the deceased of the charges framed under Sections 304B and 498A, IPC are not based on correct appreciation of evidence and the learned Trial Court has misread the evidence and indulged in conjectural inferences and surmises.

42. The Hon'ble Supreme Court in the case of Gurbachan Singh v. Satpal Singh (supra), has observed that the conscience of the Court can never be bound by any rule but that is coming itself dictated the consciousness and prudent exercise of the judgment. Reasonable doubt is imply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts of lingering suspicious and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

43. Hon'ble Supreme Court in the case of State of West Bengal v. Orilal Jaiswal and Ors., IV (1993) CCR 393 (SC)=AIR 1994 SC 1481, has approved the above principles.

44. In the present case, keeping in mind the above principles, it does not appeal to the conscience of this Court that accused respondents Moolchand and Sunita

have not committed the offence under Sections 304B and 498A of the IPC and in our opinion it is not a fit case where benefit of doubt should be given to the above two accused persons, who are father-in-law and mother-in-law of the deceased.

45. So far as other accused Shanu @ Alka is concerned, as the evidence led before the Trial Court is not sufficient to connect the accused with the offence of 304-B and 498-A, IPC, the learned Trial Court has correctly extended the benefit of doubt to her.

46. For the reasons stated above, prosecution has been able to prove charge for the offence under Sections 304B and 498A of the IPC against accused Moolchand father-in-law of deceased Premlata, and accused Smt. Sunita - mother-in-law of the deceased and they are liable to be convicted for the offence under these sections of Indian Penal Code. The finding of the learned trial Judge acquitting them of the said charges is liable to set aside and the State Appeal against acquittal of these two accused persons deserves to be allowed.

47. Taking into consideration the entire facts and circumstances of the case accused respondent Moolchand-father-in-law and Smt. Sunita Devi - mother-in-law of the deceased are convicted under Sections 304B and 498A of IPC. We think that the ends of justice would meet if these two accuse d namely, Moolchand and Smt. Sunita Devi are sentenced to undergo seven years rigorous imprisonment and pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo three months R.I. for the offence under Section 304B, IPC, and to suffer three years R.I. and pay a fine of Rs. 500/-, in default of payment of fine to further undergo two months R.I. for the offence under Section 498A IPC.

48. In the result,--

(1) the State appeal is partly allowed against accused respondents Moolchand and Sunita Devi and they are convicted and sentenced for the offence under Sections 304B and 498-A of the IPC. They are sentenced to undergo seven years rigorous imprisonment and pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo three months R.I. for the offence under Section 304B, IPC and to suffer three years R.I. and pay a fine of Rs. 500/-in default of payment of fine to further

undergo two months R.I. for the offence under Section 498A, IPC. The State appeal against accused respondent Alka is rejected.

(2) The appeal filed by accused appellant Virendra Kumar is hereby dismissed after confirming the judgment and order dated 7.2.2001 passed by the learned Addl. Sessions Judge No. 1, Jodhpur in Sessions Case No. 44/99, State v. Virendra Kumar and Ors.

49. The judgment and order of the learned trial Judge accordingly stands modified to the extent indicated hereinabove. However, the accused shall be entitled to the benefit provided under the provisions of Section 428 of the Cr.P.C. The period of detention, if any, undergone by them during the course of investigation or trial shall be given set off from the sentences awarded.

50. Since accused respondents Moolchand and Smt. Sunita Devi are on bail, they shall surrender before the learned Trial Court immediately and in case they do not surrender before the Trial Court, the Trial Court shall take necessary steps for arresting them and sending them to jail to serve out the sentences passed against them.

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