

State Vs. Gopal

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Court : Rajasthan

Decided On : May-23-2001

Reported in : 2001CriLJ3873; I(2002)DMC293; 2002(1)WLN185

Judge : Sunil Kumar Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 174 and 313

Appeal No. : S.B. Criminal Appeal No. 322 of 1993

Appellant : State

Respondent : Gopal

Advocate for Def. : Sandeep Mehta, Adv.

Advocate for Pet/Ap. : B.K. Mehar, Public Prosecutor

Disposition : Appeal partly allowed

Judgement :

Garg, J.

1. This appeal has been filed by the State of Rajasthan against the judgment and order dated 20.4.93 passed by the Learned Additional Sessions Judge, Nimbaheda in Sessions case No. 22/92 by which he acquitted the accused

respondent for the offence under Sections 498A and 306 IPC.

2. This appeal arises in the following circumstances:

(i) On 4.7.88, at about 10 p.m. P.W. 13 Laxman Singh who was S.I. in the Police Station Nimbaheda received an information from the Medical Officer Dr. R.D. Bhatt P.W. 15 from the Hospital and receiving that information, P.W. 13 Laxman Singh reached the hospital where Prem Chand was there and he informed orally to P.W. 13 Laxman Singh stating that in the morning all the persons of his family had gone to the field in the house wife of his son Gopal, namely Ram Kumari (hereinafter referred to as 'the deceased') was alone and in the noon, when he went to his house, he found the deceased unconscious and then he called his wife P.W. 4 Lahar Bai who was living nearby and she also came there. Then he called doctor and doctor advised him that she should be taken to the hospital and in the hospital, when the treatment was going on, the deceased died.

(ii) This oral report was reduced into writing and the same is Ex.P/6 and on this report, P.W. 13 Laxman Singh registered Marg FIR No. 6/88 Under Section 174 Cr.P.C. and started investigation.

(iii) During investigation, post mortem of the dead body of the deceased was got conducted by Dr. P.W. 11 Dr. R.K. Gupta and P.W. 15 Dr. R.D. Bhatt and the post mortem report is Ex.P/4 and both the doctors have stated that cause of death of Smt. Ram Kumari was esphyxia and this may be probably due to opium poisoning and they also found 6 bruises, three on the right thigh and three on her right hip part of simple nature. Thereafter P.W. 13 Laxman Singh came to the conclusion that accused appellant Gopal who was husband of the deceased used to treat her with cruelty and used to beat her and a case for offence under Sections 498A and 306 I.P.C. was made out and he himself lodged FIR Ex.P/8 and on this FIR Ex.P/8 investigation of the case was done by P.W. 14 Netrapal Singh who was SHO in the Police Station Nimbaheda.

(ii) After usual investigation challan was submitted in the court of Magistrate for offence under Section 498A and 306 I.P.C. from where the case was committed to the court of Additional Sessions Judge, Nimbaheda.

3. The charges for offence under Sections 498A and 306 I.P.C. were framed on 16.7.91 by the learned trial Court against the accused respondent who pleaded no guilty and claimed trial.

4. During trial, 15 witnesses were produced on behalf of the prosecution and statement of accused was recorded under Section 313 Cr.P.C. but he did not lead evidence in defence.

5. After conclusion of the trial, the learned trial Court vide judgment and order dated 20.4.93 acquitted the accused respondent Gopal of the charges framed against him inter alia holding that:

(i) It has not been proved by the prosecution that the deceased has been subjected to cruelty and single act of cruelty or beating is not sufficient.

(ii) Since the deceased had undergone tubectomy operation after delivery of 3rd child and because of that, she was not in a position to work and she used to feel restlessness and accused respondent used to asked her to work and there was dispute between husband and the wife on this point and such type of dispute cannot be covered with the word 'cruelty'.

(iii) There is possibility that she might have taken poison herself to end her life and in these circumstances, it cannot be said that there was any abetment on the part of the accused respondent.

(iv) That the so called death of the deceased took place in the house when the accused respondent was not there. Therefore, from this point of view also, question of abetment does not arise.

(v) The prosecution has not been able to prove beyond reasonable doubt that it was a case of suicide as the FSL report has not been produced by the prosecution. Hence the learned trial Judge came to the conclusion that no case of abetment of suicide has been proved by the prosecution and thus, he acquitted the accused respondent for the offence under Sections 498A and 306 I.P.C.

6. Aggrieved from the said judgment and order the present state appeal has been filed.
7. In this appeal it has been argued on behalf of the State that the evidence which has been led by the prosecution is sufficient to connect the accused with the commission of crime for offence under Section 498A and 306 I.P.C. and the order of acquittal passed by the learned Additional Sessions Judge, Nimbaheda should be set aside.
8. On the other hand, the learned counsel for the respondent has opposed the submissions made by the learned counsel for the State and submits that the judgment passed by the learned trial Court is based on correct appreciation of evidence and does not call for interference by this Court.
9. I have heard both.
10. To appreciate the above contentions, first post mortem report Ex.P/4 and the medical evidence in the present case has to be seen.
11. The post mortem report Ex.P/4 which has been admitted by the learned counsel for the accused during trial shows that the deceased received 6 bruises, three on her right thigh and three on her right hip part of simple nature and cause of death which was opined by the doctor P.W. 11 R.K. Gupta, P.W. 11 and P.W. 15 R.D. Bhatt is possibly due to opium poisoning but final opinion for cause of esphyxia has to be given after chemical examination report. Both Dr. P.W. 11 Dr. R.K. Gupta and P.W. 15 Dr. R.D. Bhatt have proved the post mortem report Ex.P/4 and there is also no dispute that FSL report has not been produced in this case and hence, there is no final opinion, about the cause of death in the present case.
12. It may be stated here that before a person can be convicted for abetting suicide of any other person, it must be established by cogent evidence that such other person committed suicide and this aspect is not fully proved by the prosecution in this case. This is one of the aspects of the mailer.
13. Now the oral evidence has to be discussed.

14. P.W. 1 Labh Chand and P.W. 2 Bhagirath are formal witnesses, but both have stated that they did not hear any dispute between the accused respondent and the deceased. P.W. 3 Ganpat Lal is a boy of 12 years of age who used to tell the deceased as Jiji. This witness states that he cannot say who beat Jiji and this witness has been declared hostile. P.W. 4 Lahri Bai is mother-in-law of the deceased and she does not say anything except that the deceased had three children and that she never saw the accused respondent beating the deceased. P.W. 5 Ghuni Ram is the another witness who has been declared hostile.

15. P.W. 6 Kaku Ram is the main witness in the present case who is nephew of accused respondent as well as sadu of the accused respondent. In other words, wife of accused respondent Gopal and P.W. 6 Kaku Ram are real sisters. He has stated that on two days before the incident, the accused respondent Gopal beat the deceased lightly and he heard this talk in the village and he has also admitted that after tubectomy operation, the deceased was not in a position to work and he has further admitted that the deceased used to have 'Parda' with him and she never met him. This witness has also been declared hostile. Thus, from this statement also, no case of healing or abetment can be gathered.

16. P.W. 7 Shankar Lal is another witness who is maternal uncle of the deceased. He has stated that he came to know that accused respondent beat severely the deceased and he was told by the deceased that she was beaten by her husband, but this incident related to one month back from the date of suicide. He has further admitted that since after tubectomy operation, the deceased was not in a position to work and on this court, there was dispute between husband and the wife and some time the accused respondent used to beat her and there was no other cause for dispute between the two.

17. Another witness is P.W. 8 Rameshwar Lal, who is brother of the deceased who also states that some time, the accused respondent Gopal used to beat her.

18. P.W. 9 Harlal is the father of the deceased and he also says that the deceased used to say that her husband i.e. accused respondent Gopal used to beat her, but in the cross-examination he admitted that he never lodged the report in the police Station nor in Panchayat.

19. P.W. 10 Rami bai is the sister of the deceased and wife of P.W. 6 Kaku Ram and she does not say anything against the accused respondent Gopal.
20. In my opinion, from this evidence two things have come in the picture that after operation of tubectomy, the deceased was not in a position to work and this was cause of dispute between husband and the wife and for that some time the accused respondent used to beat the deceased and nothing more.
21. On these findings, the learned Additional Sessions Judge has come to the conclusion that no case for abetment of suicide was found proved against the accused respondent. In my opinion, the findings of the learned Additional Sessions Judge which are based on appreciation of evidence should not be disturbed easily by this Court while hearing appeal against the order of acquittal.
22. As already stated above, no conviction can take place under Section 306 I.P.C. unless and until commission of suicide is proved and this aspect has also not been proved by the prosecution as the Dr. P.W. 11 R.K. Gupta has clearly stated that no definite opinion can be given about the suicide and about the cause of death of the deceased without seeing the FSL and the FSL report has not been produced.
23. Thus, the findings of learned Additional Sessions Judge, Nimbaheda by which he acquitted the accused respondent Gopal for offence under Section 306 I.P.C. are based on correct appreciation of evidence and are liable to be confirmed.
24. From the evidence on record and especially from the statements of P.W. 7 Shankar Lal, P.W. 8 Rameshwar Lal and P.W. 9 Harlal, it has come in the picture that the accused respondent used to beat his wife and they have also said that such types of complaints were made by the deceased herself. Thus, it is not a case of single act of beating. Further, the best evidence to prove that the accused respondent Gopal used to beat her wife i.e. the deceased, is found in the post mortem report Ex.P/4 which shows that at the lime when the post mortem of the body of the deceased was conducted by the Board, they found six bruises on the body of the deceased, three on right thigh and three on right hip part. Thus, the oral evidence that she was beaten by the accused respondent Gopal is confirmed

by medical evidence. Beating by husband to his wife would amount to cruelty and thus, it can be said that the deceased was subjected to cruelty by her husband i.e. accused respondent Gopal. Under the aforesaid circumstances, the offence under Section 498A I.P.C. is clearly established against the accused respondent. Thus, the accused respondent is liable to be convicted for offence under Section 498A I.P.C. and the order of acquittal on this count passed by the learned Additional Sessions Judge, Nimbaheda is liable to be set aside.

For the reasons mentioned above, this appeal is allowed in part by maintaining the order of acquittal dated 20.4.93 for offence under Section 306 I.P.C. passed by the learned Additional Sessions Judge, Nimbaheda and by setting aside the order of acquittal for offence Under Section 498A I.P.C., and the accused respondent Gopal is convicted for offence under Section 498A I.P.C. and taking into consideration the fact that the incident took place in the year 1988, the accused respondent is sentenced for the said offence to one year's R.I. and a fine of Rs. 2000/-, in default to undergo 4 months' imprisonment.

Thus, the judgment and order of the learned Additional Sessions Judge, Nimbaheda dated 20.4.93 are altered to the above extent. The accused respondent must now surrender to undergo balance period of sentence.

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