

Mohan Lal and ors. Vs. State

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Court : Jammu and Kashmir

Decided On : Oct-01-2007

Reported in : 2008CriLJ2085,2008(1)JKJ315

Judge : Virender Singh and; Mansoor Ahmad Mir, JJ.

Appellant : Mohan Lal and ors.

Respondent : State

Judgement :

Mansoor Ahmad Mir, J.

Introduction:

1. This Criminal Appeal is directed against judgment dated 18th of February, 2003 and order dated 20th of February, 2003 passed by the 1st Additional Sessions Judge, Jammu in a case titled State v. Mohan Lal and Ors., in File No. 20/Sessisoris instituted on 20.05.1998, whereby and where under appellant Nos. 1 and 2 came to be convicted for the commission of offences punishable under Sections 302/34 RPC and 498A RPC and appellant No. 3 came to be acquitted for the charge framed against her under Sections 302/34 RPC and convicted under Section 498A RPC.

Brief Facts:

2. Written report-EXPWRK came to be lodged by PW-1 Romesh Kumar brother of the deceased, in Police Station Kana Chak with the allegations that his sister namely Santosh Kumari deceased was married to Mohan Lal accused/appellant No. 1. Her mother-in-law, Shani Devi, brother-in-law, Guru Ram and Mohan Lal, husband accused/appellants were making demands of dowry, treating her with cruelty and were oftenly threatening her to leave the matrimonial house. Accused Mohan Lal is a BSF employee and whenever he used to visit the home, he was beating the deceased. The deceased was narrating all the facts to her mother, brother and other members of the family, but after persuasion they were sending her back. Mohan Lal accused in the month of February, 1998 had come on leave. He beat her, she went to her parental house and told to them. But they persuaded her and she went back. On 11th of March, 1998, Romesh Kumar, the brother along with his uncle Guchhu Ram went to the house of Mohan Lal at Dab Karam Din and persuaded the parents of the accused Mohan Lal. On 12th March, 1998 one person namely Gudu came from Dab Karam Din and informed them that deceased passed away. After they reached Dab Karam Din, deceased was taken for giving a last bath. Her mother found injuries on her body, arms, back and legs etc. During the night of 11th/12th of March, 1998 accused had tortured the deceased and beat her. This information report set the police in motion and police swung in to action. After completing the investigation, charge sheet came to be filed against all the three accused for the commission of offences punishable under Section 302/34 RPC and 498-A RPC. Accused-appellants pleaded not guilty and claimed to be tried.

3. Prosecution has examined PW-1, PW-2, PW-3, PW-4, PW-5, PW-7, PW-8, PW-9, PW-10, PW-11, PW-12, PW-13, PW-15 & PW-16. Prosecution has failed to examined PWs-6, 17 and 18.

4. Witnesses namely Bansi Lal PW-12 and Romesh Kumar PW-13 have moved application under Section 540-Cr.P.C. with the averment that they made false statements before the Court and their statements be recorded afresh. The said application came to be allowed and their statements came to be recorded on 29th of October, 2001 and 26th of November, 2001 respectively. The statements of the accused came to be recorded under Section 342 Cr.P.C. They have not taken any

defence not to speak of a specific defence but made a simple denial.

5. Accused-appellants have examined three witnesses in defence namely Bhaga Singh, Nek Ram and Sansar Chand.

6. After hearing the learned Counsel for the parties, the impugned judgment came to be passed. It appears that State has not preferred any appeal against the impugned judgment whereby appellant accused No. 3. Shani Devi came to be acquitted for the commission of offences under Sections 302/34 RFC.

(iii) Evidence:

7. It is profitable to give a brief resume of the evidence of the prosecution hereunder:

PW-1, Romesh Kumar, brother of the deceased, has deposed that deceased was married to accused Mohan Lal and after 5/6 months of marriage accused started teasing her and treated her with cruelty and made demands for dowry. Accused Mohan Lal, husband of the deceased, is a BSF employee. Whenever he was coming on leave, he was beating the deceased and was making demands. One week prior to the occurrence, she visited the parental house after accused Mohan Lal beat her and stayed with them for 2/3 days. She was persuaded and went back. He accompanied the deceased to the house of her in-laws and told to her in-laws that they had gifted the articles which they could gift her and are not in a position to meet the further demands and even he had touched the feet of the accused Mohan Lal. On 11th of March, 1998 he and Gaucho Ram maternal uncle visited the house of the in-laws of the deceased and requested to them to desist from making demands. In the morning of 12th March, 1998, they were informed that his sister deceased passed away and went there. The accused had made all steps for cremation of the dead body. When dead body was taken for giving a last bath, her mother found injuries nail marks on breasts, back, arms and legs. She made hue and cry. He, his uncle and relatives also saw/noticed the marks of violence and injuries on the dead body of the deceased. He along with his uncle Guchhu Ram and Babu Ram went to the Police Station Kana Chak and made a written report EXPWRK. Police registered the case on the basis of this report

EXPWRK/1. Police seized the dead body and dead body was taken to the hospital, broken bangles and clothes were also seized and prepared the seizure memos EXPWRK/2. Accused made a disclosure statement regarding the stick EXPWRK/6 and stick was recovered at the instance of the accused. In pursuance of the disclosure statement, recovery memo EXPWRK/7 was prepared. In cross-examination, he has stated that 'it is incorrect that the deceased was beaten by him and the mother and thereafter was taken to the house of the accused.

8. PW-2. Chano Devi, mother of the deceased, has deposed that deceased was complaining that Mohan Lal husband, brother-in-law of the deceased and mother-in-law of the deceased were teasing her, just one year from the date of marriage and were demanding dowry in the kind of Godrej Almirah and Refrigerator. Whenever deceased was visiting her house, she was complaining that she was being teased by the accused, but after persuasion she was returning back to her in-laws house. She deceased had given birth to a female child and on that occasion she had visited her house and mother-in-law of the deceased asked her whether she had brought the ear rings for her. She heard that her daughter had expired and she went to the house of the deceased Santosh Kumari and found her dead body was lying there. While giving bath to the dead body, she found marks of violence on the dead body and nail marks on the hands and accordingly her son had made a report to the police and post mortem was conducted.

9. PW-3 Sushma Devi, sister of the deceased, has also deposed that accused was teasing her and making dowry demands. When she learnt that her sister had passed away, she went to her house and found nail marks on her breast, arms and rest of the body of the deceased.

10. PW-4 Namberder. Dhantantar Singh, is a witness to the seizure of broken bangles EXPWSR, seized dead body EXPWSR/1 and seized clothes of the deceased EXPWDS/5.

11. PW-5 Shiv Ram is a witness to the seizure of broken bangles EXPWSR. He has also identified the broken bangles in the open court marked as EXPWP-1

12. PW-7 Guchho Ram has also corroborated the statements of PWs, 1, 2 and 3.

13. PW-S Gurnam Singh is a witness to the receipt of dead body EXPWRK.

14. PW-9 Narian Putt Sharma has deposed that accused-Mohan Lal had requested him to examine her. He visited the house of the deceased and saw the deceased was in veil. Deceased was not in a position to speak anything. He noticed the marks of injuries on her arms and blood was oozing out. He suspected some foul play, but she covered her arms immediately. He advised the accused to take her to Jammu Hospital immediately. But he-accused Mohan Lal told him that they are having some family dispute/feud. He asked him to forget about the dispute/feud and to shift her immediately to the hospital. Accused Mohan Lal arranged a Van and took her to Jammu hospital. On next date, he learnt that she had passed away.

15. PWs-10 and 11. Soma Devi and Behari Lal, were declared hostile.

16. PW-12 Bansi Lal has deposed that in the year 1998 his friend namely Romesh told him that he had to purchase bullocks (oxen) and requested him for accompanying him. They visited 3/4 villages, but could not make the purchase of bullocks and returned back. They reached near the house of the-accused and heard cries/alarm and entered into the house of the-accused and witnesses that accused Garu Ram had caught her hold of the deceased while as, accused Mohan Lal was beating her. Shani Devi asked the accused to beat her and to do away with her life. They asked the accused to refrain from beating her, but they replied that it is their family affair and asked them to leave their house. Thereafter they came to know that she has passed away. They went to condole her death and came to know that the deceased had received the injuries. Then they told to them that they had witnessed the occurrence.

17. PW-13, Romesh Kumar son of Bhagu Ram has also support the version of Bansi Lal.

18. Thereafter, both these PWs-12 and 13 moved a joint application for recording the statement afresh and came to be allowed. Their statements came to be recorded on 9th of October, 2001 and 26th of November, 2001, respectively. Both the witnesses have resiled from their statements and stated that they have made

false statements in the Court and had not witnessed the occurrence.

19. PW-14 Manohar Singh. Patwari is a witness to the Revenue Record.

20. PW-15 Abdul Rashid Shaheen Naib Tehsildar is witness to the receipt of packets.

21. PW-16 Dr. Btipesh Khajima conducted autopsy and observed the following injuries:

(1) Multiple bruises of variable shapes and sizes involving almost entire back of trunk including both scapular regions involving an area on 4 cm x 28 cm. The bruises diffuse in nature, with overlying multiple linear bruises running parallel to each other 5' x 3/4' on overage. With underlying thick extravasation of blood the subcutaneous tissues and intercostals muscles all over.

(2) Diffuse bruising of the left gluteal region extending further to involve back of left thigh below upto the level of popliteal region present over an area measuring about 40 cm x 22 cm and continuous to involve front and lateral aspect of left thigh at the level of iliac crest above and below upto 35 above the level of knee joint. With underlying thick extravasation of blood all over.

(3) Diffuse bruising of the right gluteal region extending further to involve back of right thigh below up to a level 3" above the popliteal fossa over an area measuring about 26 cm x 16 cm and continuous to involve lateral aspect and front of right thigh over an area measuring about 15 cm x 12 cm.

(4) Multiple diffuse bruises present over the front and lateral aspect of left leg in the middle, variable sizes regular shapes, present over an area measuring 12 cm with underlying thick extravasation of blood.

(5) Laceration measuring 1 cm x 1 cm x 5 cm present on the front of right leg at the level of 3" below the knee.

(6) Multiple bruises of variable shapes and sizes present at places on the left arm, elbow region, forearm and dorsum of left hand measuring 8 cm x 6 cm, with overlying abrasions at places with underlying:

(7) Abraded contusion measuring 3 cm x 2 cm present over the posterior aspect of right forearm, irregular shape, with surrounding over an area measuring 8 cm x 7 cm and contusion over the elbow joint.

(8) Bruise on the front of right wrist over an area measuring 4 cm x 3 cm with underlying extravasations of blood.

(9) Multiple small laceration of about 1 mm round present over the dorsum of right hand.

22. He has opined that the death was due to hemorrhage and shock as a result of multiple injuries caused by some hard and blunt object. None of the injuries were sufficient in ordinary course of nature to cause death individually, but collectively were sufficient in ordinary course of nature to cause death. Post mortem report is marked as EXPW-BK.

23. Accused have examined three witnesses in defence, but of no use for the reasons that they have not taken any specific defence.

24. Heard. We have examined the entire file, perused minutely and scanned the evidence.

25. Conviction under Section 498A RPC.

The prosecution has examined the star witnesses PW-1, brother, PW-2 mother, PW-3 sister of the deceased and PW-7 maternal uncle of the deceased in order to bring guilt home the accused. All the witnesses have deposed in one voice without any contradiction here and there that the accused were teasing deceased and were making unlawful demands of dowry. This evidence has remained un rebutted and defence has failed to shake the evidence of the prosecution in any way.

26. Who are the persons who could be said to be knowing the fact that deceased was being teased/tortured for failure on her part to bring adequate dowry and who are the persons to whom the deceased would have narrated the story?

27. The reply is that the best persons are the parents of the deceased, her relatives and friends.

28. The Apex Court in case titled as Ananda Mohan Sen and Anr. v. State of West Bengal reported in AIR 2007 SCW 3219 held that mother and friends of the deceased are best witnesses in order to prove the commission of offence punishable under Section 498A RPC.

29. The oral evidence, evidence of mother, brother, sister and maternal uncle is reliable and is not doubtful in any way and is sufficient to hold that the commission of offence under Section 498A RPC is proved.

30. The Apex Court in case titled as Mangilal v. State of Rajasthan and Anr. reported in : 2001 CriLJ4760 held that when the direct evidence is available and proves the factum of cruelty that is sufficient to convict the accused for the commission of offence under Section 498A RPC. It is profitable to reproduce the relevant portion of para 12 of the said judgment hereunder:

12...Through the evidence of these two witnesses the prosecution had also conclusively proved that 2nd respondent had subjected Munki to cruelty. In view of this direct evidence we fail to understand how it could have been concluded that there was no oral, documentary or circumstantial evidence. This finding cannot be sustained and has to be set aside.

31. The Apex Court in a case titled as Asokan v. State with M. Balasubramaniam v. State of Tamil Nadu and Rajammal and Anr. v. State by D.S.P.C.B.C.I.D, reported in AIR 2000 SC 3444 has also laid down the same ratio as laid in the judgment supra.

32. In the given circumstances, we are of the considered view that trial court has rightly convicted all the accused-appellants for the commission of offence punishable under/Section 498A RPC.

33. Conviction of appellant Nos. 1 and 2 under Sections 302/34 RPC.

There is nothing on the file suggestive of the fact that PW-9 namely Narain Dutt Sharma has made a false statement. Defence has failed to shatter his evidence or to bring any material contradiction on record and thus can be relied upon safely.

34. It was for the accused to explain how deceased sustained injuries in their house whether self inflicted or sustainable by fall or inflicted by any other person. The accused appellants have not taken any defence. In the given circumstance of the case, the conduct of the accused becomes relevant.

35. The Apex Court in case titled as State of Rajasthan v. Om Parkash reported in AIR 2007 SCW 3937 laid down the test when conduct of the accused becomes relevant. It is profitable to reproduce para 12 of the judgment hereunder:

12. The essence of the question appears to be that though the accused had given the Katari blow, the witness did not remember whether it was inflicted obliquely or straight. This by itself may not be sufficient to fasten the guilt on the accused, but this is certainly a relevant factor. Additionally the conduct of the accused was highly suspicious. If he subsequently came to the house after the incident, he has not explained as to why he did not lodge any report with the police. That would have been his normal conduct. Considering the fact that undisputedly the deceased breathed her last in the house itself. The effect of the unnatural conduct of the accused in strengthening the prosecution version has been highlighted by this Court in State of Karnataka v. K. Gopalakrishan : 2005 CriLJ1436 .

36. The post-mortem report came to be proved and exhibited as EXPWBK. It is profitable to reproduce the relevant portion of EXPWBK under the head Alleged History.

Alleged History of assault by husband on 11.3.98 in the late evening. She was brought to Medical College Hospital Jammu after she started becoming unconscious. On reaching the casualty at about 11 p.m on 11.3.98 she was declared as brought dead. Dead body was taken back to home. But on 12.3.98 a about 5 p.m the body was brought to mortuary of this hospital for post mortem examination after the filing of complaint by relatives of the deceased.

37. The crucial rather painful question is that what is the value of statement of two witnesses namely Bansi Lal and Romesh Kumar. In the substantive evidence statements record on 17th of March, 99 they have stated that they heard cries, noise/alarm when they reached near the house of the accused while returning

back to their home and entered into the house and saw accused No. 2 had caught hold of the deceased and accused No. 1 was beating her. Their statements get corroboration by the statements of Narian Dutta PW-9. So by no stretch of imagination, it could be said that they are lying, despite of the fact that they resiled from their statements and moved an application under Section 540 Cr.P.C. It is worthwhile to note here that they had made a request to the Court for police protection on the ground that accused were threatening them to give evidence in their favour. The trial court vide interim order dated 4th of March, 1999 directed SHO Police Station Kanak Chak to provide police protection.

38. As per the post-mortem report and opinion of the Doctor, no injury was found on the vital part of the body of the deceased. All injuries(supra) are not on any vital part. Doctor has opined that none of the injuries were sufficient in ordinary course of nature to cause death individually. But, collectively the injuries were sufficient in the ordinary course of nature to cause death. Keeping in view the opinion of the Doctor read with the conduct of the accused, it could be safely held and concluded that accused had not intended to cause death of the deceased. Had it been so, then they would have inflicted the injuries or only one injury with the force on the head or any vital part of the body.

39. The crucial question is whether the case in hand falls under Section 300 RPC culpable homicide amounting to murder or otherwise.

40. The Apex Court in case titled as Chuttan and Ors. v. State of Madhya Pradesh : 1994 CriLJ2097 held that when there are so many injuries on different parts of the body and none of the injuries on vital part, that case does not fall within the four corners of culpable nomicide amounting to murder as defined under Section 300 RPC punishable under Section 302 RPC. It is profitable to reproduce relevant portion of para 7 of the said judgment hereunder:

7...Now the question is whether an offence under Section 302, IPC is made out? The Doctor, who conducted the autopsy found one lacerated wound on the right fore arm 2' x 2'; a swelling on the right upper arm; another swelling on the left arm with fracture of humerus. The fourth injury is described as a compound fracture of left tibia and fibula near the knee joint. The fifth injury is described as wound-near

the left knee joint. The sixth injury is again a lacerated wound on the right leg. The seventh injury is a lacerated wound on the scalp and the eighth injury is a lacerated wound 3' x 1' on the occipital region. P.W.6, the Doctor in his deposition stated that the death was due to head injuries that is to say injuries Nos. 7 and 8. To a court question, the Doctor also(deposed) that he cannot say cent percent as to which of the two injuries caused death. He also stated that he cannot say definitely that if immediate sufficient medical aid had been provided the deceased could have been saved. According to the eye witnesses two of the accused at least were armed with sharp-edged weapons but the medical evidence shows that the injuries were not caused by sharp-edged weapons but the medical evidence shows that the injuries were not caused by sharp-edged weapons. The evidence of the eye witnesses is also to the effect that stick portion of those weapons were used in dealing the blows. Almost all the injuries were on non-vital parts namely on the legs or on the arms. Out of these injuries only one injury appears to be serious and that could have been caused with a stick. What is more, even according to the prosecution, the injured deceased was left unattended for nearly 20 hours at the site itself. No doubt the explanation is that the witnesses were afraid but in judging the intention, the main requirements of Clause I of Clause III of S.300, IPC of these aspects become relevant. Having given our earnest consideration to the manner in which the blows were dealt and the parts of body on which they were dealt and part of body on which they were dealt and the manner in which the weapons were used, we find it difficult to conclude that the intention of the appellants was to cause death or to cause such injuries which were sufficient in the ordinary course of nature to cause death. But they can be attributed the knowledge that by causing death of the deceased. Accordingly, the conviction of the appellants under Section 302, IPC and the sentence of imprisonment for life awarded there under are set aside. Instead they are convicted under Section 304, Part UU, IPC and sentenced to undergo R.I for five years.

41. The weapon of offence, size of the weapon, background facts and parts of the body, where the injuries were inflicted, are the factors to be considered in order to come to the conclusion whether the case is covered under Section 302 RPC or 304 Part-I RPC or 304 Part-II RPC.

42. The Apex Court in case titled as State of Andhra Pradesh v. Rayavarapu Punnaya and Anr. reported in : 1977 CriLJ1 laid down the test rather provided and prescribed how to make or mark a distinction that whether offence falls under Section 302 IPC or 304 Part I IPC and 304 Part II IPC. It is profitable to reproduce para 12 and 21 of the said judgment hereunder:

12. In the scheme of the Penal Code, 'Culpable homicide' is genus and 'murder' its specie. All 'murder' is culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of, fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree' This is the greatest form of culpable homicide, which is defined in Section 302 as 'murder' The second may be termed as 'culpable homicide of the second degree' This is punishable under first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 302, Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the found clauses of the definition of 'murder' contained in Section 302. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder, punishable under the first or the

second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304, Penal Code.

43. In order to determine which offence is made out, the conduct of the accused as discussed above plays an important role. Had accused intended to kill her, then he would not have immediately requested PW-9 Narain Dutt to examine her and would not have taken her to the hospital.

44. It is apt to mention herein, that appellant No. 3 Shani Devi came to be acquitted for commission of the offence under Section 302/34 RPC. Admittedly, State/Complainant has not preferred the appeal against her acquittal. In the given circumstance, least said is better.

45. The question is, what is the role played by accused No. 2 appellant No. 2. There is ample evidence on the file proving the fact that accused No. 2 caught hold the deceased. Thus, the role of accused No. 2 is proved and could be safely fastened with liability with the aid of Section 34 RPC.

Keeping in view the factual background read with the principles laid down and the discussion made hereinabove, we are of the inevitable conclusion that the conviction under Section 302 RPC cannot be maintained and the conviction has to be in terms of Section 304 Part-II RPC.

46. Custodial sentence of 9 years would meet the ends of justice with fine of Rs. 30,000/-. In default, the appellants /accused had to undergo two years rigorous imprisonment. The fine, if paid, payable to the daughter of the deceased.

47. The conviction and sentence under Section 498A RPC is maintained. Viewed thus, appeal is partly allowed. The conviction and sentence under Section 302 RPC is set aside and accused Nos. 1 and 2 are convicted and sentenced under Section 304 Part-II RPC as indicated above.

48. The confirmation petition, accordingly, answered. Registry is directed to send copy of the judgment to all the trial Courts for information.

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