

Santosh. Vs. the State of Madhya Pradesh.

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Court : Madhya Pradesh Jabalpur

Decided On : Jul-06-2010

Judge : J.K. Maheshwari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306, 304-B Read with Section 498-A

Appeal No. : CRIMINAL APPEAL No.1271 OF 1995.

Appellant : Santosh.

Respondent : The State of Madhya Pradesh.

Advocate for Def. : Shri Yogesh Dhande, Adv.

Advocate for Pet/Ap. : Shri Siddharth Datt, Adv.

Judgement :

1. This appeal is directed against the judgment dated 28.8.1995 passed by 1st Additional Sessions Judge, East Nimad, Khandwa in Sessions Trial No. 168/94 convicting the appellant for offence under sections 498-A of the IPC and directing him to undergo rigorous imprisonment of two years with fine of Rs.200/-, in default of payment of fine, additional rigorous imprisonment of one month.

2. As per prosecution story, the appellant was married with Anita in the year 1985. After marriage she along with the appellant resided at village Pipalgone, district Khargone and thereafter they came to village Bhambarad where the accused

started a tea shop along with Pan and Namkeen shop. It is alleged that the appellant demanded Rs.3,600/- from his wife for getting a tin put on shop and according to the prosecution the said amount was sent by the father-in-law of the appellant Gulab Singh (PW-1). It is further alleged that for getting government employment Rs.10,000/- was demanded by the appellant and it was paid to him. It is further alleged by the prosecution that on 4.6.1995 there was heated exchange of words between the appellant and his wife and accused assaulted his wife and went to his shop. Thereafter the deceased by pouring kerosene put her body into fire. However, the offence under section 304-B read with section 498-A of the IPC was registered and the challan was filed in the competent Court. The said offence was triable by the Court of Session. However, it was committed to the competent Court.

3. The trial Court found that the incident had taken place after seven years from the date of marriage, however, the charge under section 306 read with section 498-A was framed against the accused-appellant Santosh. The accused has abjured his guilt and put his defence that he has been falsely implicated. The trial Court found that the charge under section 306 of the IPC is not proved beyond reasonable doubt because ingredients of abetment as specified under section 107 of the IPC have not been established by the prosecution while charge under section 498-A of the IPC was found proved considering the dying declaration of the deceased Ex.P-13. However, the appellant was convicted for the offence under section 498-A of the IPC and sentenced for the same charge as mentioned hereinabove.

4. Learned counsel Shri Siddharth Datt, appearing on behalf of the appellant has argued with vehemence and made strenuous efforts to satisfy this Court that the finding as recorded by the trial Court to prove the charge for the offence under section 498-A of the IPC is not proved beyond reasonable doubt. Taking me through various documents my attention has been drawn to the earlier dying declaration Ex.P-10 to demonstrate the fact that in the statement of the deceased recorded by the police no allegation of cruelty, harassment, demand of dowry and putting fire by the appellant by pouring kerosene has been alleged. Therefore, the first dying declaration should be relied upon and the conviction of the appellant

which is based on subsequent dying declaration Ex.P-13 is liable to be set aside. Learned counsel submits that the prosecution has failed to prove the allegation of harassment and cruelty against the deceased. As per the statement of mother and father of the deceased it appears that the appellant and the deceased were leading their life peacefully. Therefore, also conviction of the appellant for the offence under section 498-A of the IPC is liable to be set aside.

5. On the other hand, Shri Yogesh Dhande, learned Panel Lawyer appearing on behalf of the State submits that the conviction is based on the dying declaration of the deceased which is recorded by the Executive Magistrate (Ex.P-13), and bare reading of such dying declaration it is apparent that the deceased was conscious enough to depose before the Executive Magistrate. In the said dying declaration allegation of demand of dowry, cruelty and harassment has been stated by deceased. The trial Court has rightly relied upon such dying declaration and convicted the appellant for the charge under section 498-A of the IPC. The first dying declaration (Ex.P-10), as contended is not worthy of credence and is not liable to be relied upon because it is merely a statement recorded under section 161 of Cr.P.C. by police. No verification has been recorded by the doctor that at the time of recording it, the deceased was in a conscious position. In such circumstances, the trial Court has not committed any error in not relying upon the dying declaration (Ex.P-10) which is not worthy of credence. In view of the said submission, it is urged that conviction of the appellant under section 498-A of the IPC as directed by the trial Court is liable to be upheld and the appeal filed by the appellant being devoid of any substance deserves to be dismissed.

6. An alternate prayer, at this stage, made by the learned counsel for the appellant is that if this Court is of the opinion that the conviction for the charge under section 498-A of the IPC is found established, then the sentence as directed by the trial Court may be reduced to the period already undergone by him by increasing some amount of fine.

7. After having heard learned counsel appearing on behalf of the parties I have gone through the record and on perusal of the dying declaration recorded by the police (Ex.P-10) as well as dying declaration recorded by the Executive Magistrate

(Ex.P-13), I find much substance in the arguments of Shri Dhande, learned Panel Lawyer. The perusal of the findings recorded by the trial Court indicates that the dying declaration (Ex.P-13) has been rightly relied upon by the trial Court. In the said dying declaration allegation of cruelty and demand of dowry has been made by the deceased. The doctor has certified such dying declaration and said that while recording said the deceased was conscious to depose before the Executive Magistrate. In view of the aforesaid I am of the considered opinion that finding of conviction of the appellant for the charge for offence under section 498-A of the IPC, as recorded by the trial Court, is not liable to be interfered with and is hereby upheld.

8. The incident has taken place on 4.6.1994 and since then about 16 years have already been passed. The appellant has tasted with jail life and remained in custody for about one month. However, alternate prayer of learned counsel for the appellant may be accepted and by reducing sentence of two years to the sentence already undergone, the fine amount may be increased from Rs.200/- to Rs.10,000/- (Rs. Ten Thousand) which shall meet the ends of justice.

9. In the result, the appeal is allowed in part. The conviction of the appellant under section 498-A of the IPC is maintained but the sentence awarded by the trial Court is reduced to the period already undergone by him. However, the fine amount is increased from Rs.200/- to Rs.10,000/- (Rs. Ten Thousand) which shall be deposited in the trial Court by the appellant within three months from today. It is made clear that in case the appellant fails to deposit fine amount of Rs.10,000/- within the aforesaid period, he shall undergo the remaining part of the sentence of imprisonment as directed by the trial Court and the concerned Chief Judicial Magistrate is at liberty to issue warrant of arrest against the appellant to send him jail to serve out the remaining part of the sentence.

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