

State of H.P. Vs. Sheikh Mohammad.

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Court : Himachal Pradesh

Decided On : Mar-03-2011

Judge : R.B. Misra; Surinder Singh, J.

Acts : Indian Penal Code (IPC) - Sections 498-A, 306; Code of Criminal Procedure (CrPC) - Sections 154, 161

Appeal No. : Cr. Appeal No. 209/2001.

Appellant : State of H.P.

Respondent : Sheikh Mohammad.

Advocate for Def. : Mr. J.L. Bhardwaj, Adv.

Advocate for Pet/Ap. : Mr. R.K. Sharma, Adv.

Judgement :

1. Respondent was acquitted for the offences punishable under Section 498-A and 306 Indian Penal Code by the learned trial Court which has been challenged in this appeal by the State.

2. Heard and gone through the record.

3. Precisely, facts giving rise to the present appeal can be stated thus. Deceased Seema Begum was the daughter of PW3 Salamti Begum and sister of PW4 Nek Mohammad. She was married to accused-respondent in the month of November,

1996. From this wed-lock, she gave birth to two twin issues. Respondent was working at Indore (M.P.). Deceased was also taken to that place and remained there for some time. Thereafter accused came to his native place. The deceased visited the house of her parents to participate in the marriage of Sardarn Bibi daughter of her uncle but the accused did not visit them. The deceased is alleged to have over-stayed in the house of her parents by one day. When she came to her matrimonial home along with her brother PW4 Nek Mohammad, it is alleged that when she tried to touch his feet, she was not allowed rather accused told her brother that she should be taken back along with him lest he would hear something unpleasant. When PW4 Nek Ram returned to his house, he informed about this fact to his mother. After about four days, the deceased consumed poison, i.e. aluminum phosphide. Thereafter she was taken to PW2 Dr. Dinesh Sharma where she was got medically examined and she was found conscious well oriented to time and place but her pulse was feeble. However, he informed the police but in the meantime, she died on 12.2.1998.

4. The inquest papers were prepared by the police. Photographs of the dead body were also taken. The autopsy was performed by PW1 Dr. Sunita. The post-mortem report is Ext. PW1/A. Viscera was sent for the chemical examination and vide report Ext. PW2/B doctor confirmed the death of the deceased on account of consumption of aluminum phosphide.

5. PW3 Smt. Salamti Devi mother of the deceased got recorded her statement under Section 154 of the Code of Criminal Procedure on the same day which culminated into the present FIR.

6. Police recorded the statements of the witnesses. After completing the investigation, challan was presented in the Court for the trial of the respondent. Respondent was accordingly charge sheeted for the offences aforesaid to which he pleaded not guilty and claimed trial.

7. Mainly the prosecution case is based upon the statement of the mother and brother of the deceased, i.e., PW3 and PW4 respectively to prove the guilt. Accused took up the defence that the deceased was of hypersensitive nature and used to flare-up on trivial issues and the case as alleged by the relatives of the

deceased is incorrect.

8. When called upon to enter into his defence, no evidence in defence was led.
9. At the end of the trial, the trial court disbelieved the contradictory version given by the prosecution witnesses and acquitted the respondent.
10. As a matter of fact, prosecution is obliged to prove its case beyond reasonable doubt that the cruelty meted out to the deceased by the accused was of such a nature which would have endangered her life or limb and further that the accused had abetted suicide. As already stated above, prosecution has relied upon the statement of PW3 Salamti Begum mother and PW4 Nek Mohammad brother of the deceased to establish the guilt against the accused. There is general allegation about the cruelty stated by the mother of the deceased without quoting any specific instance. She stated that deceased had visited her alone to attend the marriage of the daughter of her uncle where she over-stayed for one day. When she was sent along with PW4 to the house of her husband, on return, PW4 disclosed that she tried to touch the feet of the respondent, he did not allow her to do that and was reluctant rather he expressed his anguish and desired that she should be taken back lest they would hear something unpleasant. As against this, statement if the testimony of PW4 her son is seen he did not utter even a single word about it rather he stated that when he reached the house of the accused, he asked him to take her back since she had over-stayed in the house of her parents and also told him that in case he would not do so then he should not say anything if something untoward happened. He was confronted with his statement recorded under Section 161 of the Code of Criminal Procedure, but this fact did not find mentioned therein. He also stated that whenever he accompanied her on many occasions to the house of his brother-in-law, nothing untoward had happened. He also admitted that accused had taken his brother Sher Mohammad with him to Madhya Pradesh where he was employed when deceased was living with him. There is nothing on record to show that so long as the deceased lived in the company of the accused, she was ever tortured and maltreated by the accused. Even Sher Mohammad was not examined who was a material witness to divulge the fact about the behaviour of the accused with the deceased. Further, the

deceased had studied up to 5th standard and it is admitted by PW4 that she knew how to write letters but there is also no letter to the effect that accused had been maltreating and torturing the deceased at any point of time.

11. We find that the contradictory statements of PW3 and PW4 above are not worth inspiring confidence. They are hollow and untrue to meet out the ingredients of the offences charged so as to convert acquittal in conviction. 12. For the foregoing reasons, we do not find any material to interfere with the acquittal of the respondent as such the appeal sans merit and is accordingly dismissed. The respondent is discharged of his bail bonds entered upon by him at any stage during the proceedings of this case.

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