



GOA

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Bombay

Judgement

Volume - 4



Goa JUDICIAL SERVICES

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37.	Wasim Versus State nct of delhi	Section 498A IPC When Conviction by Trial Court Was Not For Dowry Demand, HC Cant Convict Accused for It Without Appreciating Evidence Record	July 18, 2019
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40.	Girish Singh Versus The state of Uttarakhand	Cruelty not Related to dowry cannot Be basis for Conviction under Section 304B IPC.	JULY 23, 2019

Deceased's Parents Are Most Natural Witnesses In Dowry Death.

Mahadevappa

Versus

State of Karnataka,

(Supreme Court)

Judgment: Hon'ble J, Abhay Manohar Sapre, Hon'ble J, Indu Malhotra

Pronounced by: Hon'ble Abhay Manohar Sapre J.

Dated: 7 January 2019

Facts

The appellant (accused) was married to (deceased) on 04.06.1994 and on same day, younger sister of deceased was also got married to the appellant's younger brother. Soon after marriage, the deceased told her parents that appellant used to drink liquor and always asked her to bring money. She also told that the appellant used to harass and beat her for illegal demands of money. On 2.10.1995, the father of (deceased) received a message that his daughter admitted to hospital for burn injuries. On reaching hospital, deceased told him that the appellant had poured kerosene oil on her body and set her on fire. The plea taken by the appellant was that the incident was accidental and not homicidal as the deceased sustained injuries because she was near the oven when her sari caught fire.

FIR was lodged by PW, (father of deceased) against the appellant for the commission of offences under Section 498A and 302 IPC.

The session judge acquitted the appellant of all charges and held that prosecution has failed to prove the charge of dowry demand and also that death of deceased was homicidal.

The state/respondent filed an appeal in High Court and the High Court reversed the order of acquittal, and, convicted and sentenced him for life imprisonment under Section 498A and 30. IPC. Thereafter, the appellant challenged the above judgement before the Supreme Court.

Issues

1. Whether the death of deceased can be regarded as "Dowry death"?
2. Whether the death was homicide or accidental in nature?

With respect to first issue, the father of deceased (PW,) deposed in his evidence that appellant was working as a constable in state police department and was addicted to consuming alcohol daily, and, often visited to his (PW,) house in fully drunken condition. Deceased told him and his wife that appellant under the influence of alcohol used to insist her to consume liquor and dance before him undressed. His daughter told him many times that the appellant used to harass her and used to insist to bring Rs. 4000 to 5000/- from her parents. On two occasions, PW, managed to send 2000/- but third time he declined due to the poor financial capacity. Deceased also told him that she apprehends danger to her life and therefore would like to come back and stay with her parents in their house. Thereafter, with the intervention of elder members of the village, deceased agreed to go back and stay with appellant. After going there, she sent a letter to her father (PW;) mentioning the incidents of ill-treatment meted out by her husband. Deceased again made demand for 3000/- for the appellant. On 2-10-1995, a message came to him that her daughter suffered extensive burns on her body and admitted to hospital. On the reaching there, his daughter told him that appellant poured kerosene oil on her body, due to which she suffered injuries.

The Mother of deceased (PW4) also corroborated the evidence of PW,. The Son-in-Law of PW, and younger brother of appellant (PWs) deposed that appellant used to ill-treat his wife (deceased) and at times beat her also..

Therefore, it is proved that appellant used to demand money quite often and at times used to ill-treat and assault deceased and these incidents did not occur once but on many occasions, started soon after marriage which continued till deceased's death.

The said issue was decided in the Affirmative. On second issue:

1. At the time of incident the only appellant was present in the house with the deceased and the same fact was not in dispute. Ought, to, cannot be believed.

2. The evidence of investigation Officer, post mortem report, FSL report and the evidence of doctor has proved that kerosene oil was found on the body of deceased and bottle of kerosene was also lying in the room. The presence of kerosene oil on the body of deceased indicates that the same was poured over body.
3. It is not submitted anywhere in the case that the deceased has tried to commit suicide by pouring kerosene oil upon her and put herself on fire.
4. The relationship between the spouses was not cordial and appellant always used to demand money from deceased.
5. Had it been the case of accidental death, the burn injuries sustained by the deceased would have been more on the lower part of the body rather than upon the upper part. According to appellant, the deceased was near the oven when her sari caught fire, whereas post-mortem report shows that the burn injuries were more on her upper part and her blouse was found burnt.
6. Therefore, in the absence of any plausible explanation given by the appellants, the manner in which incident occurred and material seized from the room i.e., kerosene oil bottle and other circumstances, it is proved beyond reasonable doubt that appellant is responsible for causing death of deceased.

Therefore, the death of deceased was homicidal and not accidental.

Conclusion

The Court observed that father and mother of deceased are the most natural and material witnesses and there is no reason to discard their evidence. Newly married girl would always like to first disclose her domestic problems to her mother and father and then to her close relatives because they have access to her and are always helpful in solving her problems. Therefore, the testimony given by deceased's parents is trustworthy and reliable. Hence, appeal dismissed.

[Section 302 IPC. Section 354(3) of Cr.P.C.]

Intention resulted into an attack more severe than planned which then resulted into death would not fall in rare of the rarest cases.

Yogendra @ Jogendra Singh

Versus

State of Madhya Pradesh

3 Judges Bench of Hon'ble Supreme Court

Hon'ble S.A. Bobde, R. Subhash Reddy and L. Nageswara Rao JJ.

Dated: January, 17, 2019

Law Point

1. Concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3).
2. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.
3. If there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence.

Brief facts

In this case the deceased Ruby was married to one Mr. Sanjay Gupta and had two issues from the wedlock. The Appellant covered her and the husband suspected an affair between his wife - the deceased and the Appellant and harassed her accusing her of the same. The deceased thereafter came to live with her maternal uncle. The Appellant pressurized the deceased's father (PW 8) for summoning her to Porsa (a place) and threatened him with dire consequences if his demand was not fulfilled.

On the ominous night of summer, the deceased and her family members went to their respective rooms and retired for the night. The doors were kept open since it was summer. There was light in the rooms and the courtyard from

some bulbs. The Appellant snuck into the room of the deceased and warned her "though she doesn't want to live with him he is not going to let her live with anybody else". The father of the deceased, Dataram (PW 8) woke up on hearing this and saw the Appellant running away after throwing acid on his daughter. The deceased started screaming, whereupon other family members tried to save her the Appellant then, threw acid on the other members of the family, burning and injuring all of them. In the attack, the deceased sustained burn Injuries to the extent of 90% all over her body while others also sustained burn injuries. In the incident the grandmother of the deceased Smt. Chandrakala (PW 3) and one Raju -nephew (PW 7) of the deceased and Janu (PW 4) brother of the deceased were also injured. A Dying declaration of the deceased was recorded which pointed out the accused as culprit Also, dying declarations made by the injured were consistence with the dying declaration of the deceased. Though the injured survived the injuries.

The Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. In that case the appellant was charged along with co-accused one Kiran Nurse for committing the murder of one Laxmi Narayan alias Laxman Singh in the intervening night of 27.07. 1994 and 28.07.1994. And this incident occurred on 21.07.2013,

Decision of the Trial Court

The Sessions Court awarded the Appellant death sentence under Section 302 of the IPC and also, convicted him for disfiguring and injuring these people by throwing acid under Section 326(A) of IPC.

Decision of Hon'ble High Court

By an order of High Court of Madhya Pradesh, Gwalior Bench, dated 12.12.2014 confirming the death sentence awarded to the appellant by the Sessions Court, Ambah, District Morena (M.P.) vide its judgment in Sessions Trial No.388/2013 dated 24.07.2014. The Appellant has been convicted under sections 302, 326(A) and 460 of IPC and awarded capital punishment of death sentence, life sentence on three counts and fine of Rs.25,000/-each, and ten years' R.I. and fine of Rs.5000/- with default stipulations, respectively. This death sentence has been confirmed by the High Court on a reference under Section 366 of Cr.P.C.

An appeal was then filed before the Hon'ble Supreme Court on behalf of appellant accused.

Points of determination

1. Whether the court below erred by convicting the accused in 302 IPC?
2. Whether there are special reasons as to why the appellant should be sentenced to death?

Observation by Hon'ble Supreme Court

Answer to point 1

Hon'ble Court observed that they are satisfied that the Appellant has been rightly convicted for causing the death of the deceased Smt. Ruby as all the circumstances of the case and particularly the dying declaration of Smt. Ruby, unerringly point, to the Appellant as the one who caused her death. There is no conjecture, surmise or inference in the narration of the witnesses who saw the Appellant in the act and were themselves Also, the victim of his acid attack. Also, the evidence on record was sufficient to prove the guilt of accused beyond reasonable doubt. Thus, the conviction of the accused under section 302 IPC stands valid and requires no interference.

Answer to point 2

Hon'ble Court then advert to the question as to whether there are special reasons to sentence the Appellant to death. And then, the Court analysed the reasons which may count as 'special reasons' to sentence a convict to death as follow:

1. The term 'special reasons' undoubtedly means reasons that are one of a special kind and not general reasons. In the present case there is one factor, which might warrant the imposition of the death sentence, as vehemently, urged by the learned counsel for the Stare that the Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. It is undoubtedly difficult to ignore this fact but we find that it is safer to consider the imposition of sentence based on the facts of this particular case. If there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence, But that does not appear to be so in the present case. The earlier incident