

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO.1444 OF 2011

Appellant(s) Kishore Chand Ap
 Versus
 Respondent(s) State of Himachal Pradesh Re

O R D E R

against the The present appeal is preferred
 sentence dated judgement of conviction and order of
 15th December, 2010, passed in Criminal Appeal No.22 of 2001
 by the High Court of Himachal Pradesh at Shimla, whereby the
 High Court entertaining the appeal under Section 378(3) of
 dislodged the the Code of Criminal Procedure (CrPC) had
 judgement of acquittal dated 8th September, 2000, passed by
 in Sessions the learned Sessions Judge, Hamirpur, H.P.,
 Trial No.4 of 1998, whereunder the learned trial Judge had
 found that the prosecution had not been able to prove the
 offences punishable under Sections 498A and 306 read with
 against the 34 of the Indian Penal Code (IPC)
 Signature Not Verified
 Digitally signed by accused persons, namely, the appellant-husband
 and his Chetan Kumar
 Date: 2014.11.08
 10:51:51 IST
 Reason: parents.

The prosecution case, in brief, is that the
 deceased, Meena Devi, entered into wedlock with Kishore

Chand as second wife in May, 1992, as per the Hindu rites and customs. In the wedlock, a son and a daughter were born. After few years of marriage, as time rolled by, the husband started treating wife with cruelty and in 1994 she witnessed the first treatment of cruelty.

The parents of

the husband also joined in such treatment.

As the facts

would further unfurl, unable to tolerate such maltreatment, the deceased, Meena Devi, jumped into the well on 26th May, 1997 along with her son, Ajay Kumar, aged two and half years and daughter, Sunita Devi, aged four and half years and all of them breathed their last.

After the death was revealed,

the investigation commenced and after due investigation, charge-sheet was filed for offences punishable under Sections 498A and 306 IPC read with Section 34 IPC.

Eventually, the matter was committed to the concerned trial

Judge. The accused persons abjured their guilt and pleaded false implication.

The prosecution in order to substantiate its case, examined number of witnesses and the principal witnesses are PW-1, Beer Singh, PW-14, Prem Raj, the brothers of the deceased and PW-15, the father of the deceased. The other witnesses are basically formal witnesses.

During the course of investigation, the investigating agency had seized three letters, alleged to

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have been written by the deceased, Meena Devi, and all the three letters were exhibited before the learned trial Judge.

Be it noted, the letters were sent for expert examination and eventually the trial Court opined that it was extremely difficult to place reliance on exhibit PW-13/A, which is the

letter dated 19th March, 1997. The other two letters,

however, were also not given credence to by the learned trial Judge on the foundation that there was a possibility that the same were written by the deceased but the said two letters did not reflect any allegation as regards the ill

treatment. The learned trial Judge also found that there was no substantial oral evidence to record a conviction and, accordingly, acquitted the accused persons.

In criminal appeal the High Court found that the learned trial Judge had fallen into grave error by ignoring the letter i.e. PW-13/A, for there was no justification not to give credibility to the same. At this juncture, be it stated that an innovative argument was put forth before the High Court that the deceased and the two children accidentally fell into the well, but the same did not weigh with the High Court for the simon pure reason the High Court found that where the well was constructed, no signs of skid was available and it was not a situation where the deceased had gone to the well to fetch water or to do anything and, therefore, the plea of accident was absolutely far fetched.

As is perceived from the judgement of the High Court, it has

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basically placed reliance on the testimony of the brothers and other supportive evidence and the letter written by the deceased vide exhibit PW-13/A.

On the aforesaid analysis, the High Court altered the conviction and convicted the appellant under Sections 498A and 306 IPC read with Section 34 IPC and found the appellant and the parents guilty of all the offences and sentenced the appellant to suffer rigorous imprisonment for five years under Section 306 IPC, two years under Section 498A IPC and to pay a fine of Rs.2000/Rs.3000, on both the respective scores with the default clause. As far as the parents are concerned, for the reasons best known to the High Court, sentenced them till rising of the Court.

We have heard Mr. J.S. Attri, learned senior counsel for the appellant and Mr. Suryanarayana Singh, learned Addl. Advocate General for the State of Himachal Pradesh.

First, we shall deal with the facet whether the view expressed by the learned trial Judge was a plausible one and

did not warrant interference by the High Court. It is well

settled in law that if the view expressed is plausible one,

the High Court should not interfere.

However, if there is

improper appreciation of evidence or manifest error on

record, non-consideration of evidence which have materially

affected the verdict, definitely the appellate court has

jurisdiction to re-appreciate the evidence and reverse the

judgement of acquittal. As we perceive, the expert opinion

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was that two letters were written by the deceased, one

virtually did not contain anything and, therefore, on that

score no fault could be found with the learned trial Judge.

As far as the letter exhibit PW-13/A is concerned, the same

has immense significance.

The High Court has translated the

contents of the said letter which is admissible in evidence,

but for unexplained reasons, the trial Judge ignored it.

The High Court has perused the contents of the letter and

come to hold that the factum of ill treatment and cruelty

that was meted out to wife, had been established and,

therefore, she was compelled to commit suicide.

To satisfy

ourselves, we have scrutinized the letter and we have found

that the letter has been written by the daughter to the

father in an agonised tone, expressing the torture, the

taunt, the sufferings and the trauma that she had undergone.

She has also indicated that the life had become unbearable

and she was not able to sustain the life and was likely to

invite death at any point of time.

The said letter was

written two months prior to the death.

Once we do not

accept the innovative submission pertaining to accidental

death and there is oral evidence which gets support from the

documentary evidence, the letter written by the wife, the

only inevitable and irresistible conclusion

is that the

prosecution has proved the offence to the hilt and,

therefore, we do not find any error in the conclusion

recorded by the High Court.

Resultantly, the appeal, being devoid of merit, stands dismissed. As the appellant is on bail, his bail bonds be cancelled and he be taken into custody forthwith.

.....J.
(Dipak Misra)

.....J.
(Rohinton Fali Nariman)

.....J.
(Uday Umesh Lalit)

New Delhi;
October 15, 2014.

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ITEM NO.102

COURT NO.7

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.1444 of 2011

KISHORE CHAND

Appellant(s)

VERSUS

STATE OF H.P.

Respondent(s)

Date : 15/10/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. J.S. Attri, Sr. Adv.
Mr. Rameshwar Prasad Goyal, AOR
Mr. Sumeet Parkash, Adv.

For Respondent(s) Mr. Suryanarayana Singh, Addl. A.G.
Ms. Pragati Neekhara, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Chetan Kumar)
Court Master

(Renuka Sadana)
Court Master

(Signed order is placed on the file)