
(2021) 10 RAJ CK 0082

In the Rajasthan High Court

Case No : D.B. Criminal Appeal No. 205 Of 2019

Gyan Chand Arora

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174, 372
Indian Penal Code, 1860 — Section 34, 302, 306, 323, 406, 498A
Evidence Act, 1872 — Section 113A, 113B

Citation : (2021) 10 RAJ CK 0082

Hon'ble Judges : Sandeep Mehta, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : B.R. Bishnoi, Kuldeep Sharma

Final Decision : Dismissed

Judgement

Rameshwar Vyas, J

This criminal appeal under Section 372 CrPC has been filed by the complainant Gyan Chand Arora father of the deceased Smt. Meena Rani being aggrieved of the judgment dated 18.01.2018 passed by learned Additional Sessions Judge No.1, Hanumangarh in Sessions Case No.31/2016, whereby the accused respondents herein Manoj Kumar, Sanjeev Kumar, Darshana Devi and Jagdish Kumar were acquitted from the offences punishable under Sections 498-A, 306 & 302/34 IPC.

As per prosecution story, Meena Rani was married to Manoj Kumar respondent No.2 on 29.10.2000 as per Hindu rites and rituals. Respondent No.3 Sanjeev Kumar is uncle of Manoj Kumar, whereas, Darshana Devi and Jagdish Kumar are mother-in-law and father-in-law of the deceased Meena Rani. Evidence on record reveals that in the year 2006, on the complaint of father of Meena Rani, an FIR No.599/06 (Ex.P/3) was registered at Police Station Kotwali, Bhatinda under Sections 406, 498-A & 323 IPC against respondents herein. In that case, after investigation, present respondents were held guilty for offences under Sections

498-A & 406 IPC by Judicial Magistrate First Class, Bhatinda on 27.01.2014 (Ex.P/7); appeal against the conviction was also dismissed by Additional Sessions Judge, Bhatinda on 09.11.2016. However, as per evidence on record, compromise (Ex.P/5) was arrived at between the parties and Meena Devi returned to her matrimonial home on 21.10.2007. On 05.03.2008, in the morning, Manoj and Jagdish informed on telephone that Meena has got burnt due to explosion in gas cylinder; and had sustained injuries. The incident took place in the matrimonial home of Meena Devi at Hanumangarh Town; she was admitted in the Nagpal Hospital at Bhatinda, where family members of the complainant party also reached on receiving the information.

As per prosecution story, injured Meena Devi while undergoing treatment in a critical condition told her father and family members that she has been put on fire by her husband, father-in-law, mother-in-law and Vicky (younger brother of his husband) on account of demand of dowry. In this regard a written report was filed on 12.03.2008 at Police Station Hanumangarh Town, upon which, First Information Report No.186/08 (Ex.P/2) was registered under Sections 498-A & 302 IPC. However, after investigation charge-sheet was filed under Sections 498-A & 306 IPC before Additional Chief Judicial Magistrate, Hanumangarh. The case was committed to Sessions Court, Hanumangarh; charges under Sections 306 & 498-A IPC were framed against all four accused. During trial, on the prayer of complainant party, alternative charge under Section 302 IPC was framed against the accused persons. After completion of trial, all accused were acquitted of all offences charged against them. Being aggrieved of the impugned judgment of acquittal, this appeal by complainant is before this Court at admission stage.

Respondents have made their appearance after service of the notice.

No one appears on behalf of the appellant.

We have perused the record of the case and heard learned counsel for the respondents.

In this appeal, the appellant has challenged the impugned judgment on the ground that learned trial Court has erred in not relying upon evidence of the prosecution witnesses; deceased was consistently harassed and beaten on account of not fulfilling the constant demand of dowry. She was expelled from matrimonial home by the respondent in the year 2006, for that FIR No.599/06 was registered at Police Station Kotwali and accused persons were convicted in that case. Learned trial Court has given undue importance to the evidence of hostile witnesses PW 1, 2 & 3, who have been won over by accused persons. Soon before her death the deceased clearly told her father Gyan Chand that she had been burnt by Manoj, Jagdish, Darshana and Sanjeev @ Vicky for not fulfilling the demands of dowry. Learned trial Court has committed illegality in not relying upon the dying declaration of the deceased. Hence, it was prayed that order impugned may be quashed and set aside and respondents be convicted for offence under Sections 498-A & 302/34 IPC.

On the other hand, learned counsel for the respondents supported the impugned judgment passed by learned trial Court.

After perusing the record of this case carefully and considering the grounds of appeal, it emerges that the incident took place after about 7 years & 5 months of the marriage. Deceased Smt Meena Rani, who was native of Bhatinda, was married to Manoj on 29.10.2000; after marriage, she went to her matrimonial home at Hanumangarh Town. The incident in which she received burn injuries took place on 05.03.2008 in the morning. It is an admitted fact that incident was reported by in-laws of the deceased, to father of Meena Devi on the same day by telephone, wherein, it was informed that Meena Devi had sustained injuries on account of blast of gas cylinder. Gyan Chand PW7 in his deposition stated that after admission of Smt. Meena Devi at Bhatinda in Nagpal Hospital, he was again informed by Manoj; then he (PW7), Ishwarlal, Darshana, Hardev went there and saw Meena Devi, who had received burn injuries; he talked to her, she told them that she has been burnt by Manoj, Jagdish, Darshana on account of non-fulfillment of dowry demands. While undergoing treatment, she passed away in the intervening night of 5th or 6th March 2008. The allegation that Meena Devi told her father that she had been burnt by the accused does not find corroboration from statements of Ishwar Kumar PW5 and Darshan Singh PW6 whereas Hardev was not been produced in evidence. Cremation was performed in the presence of family members of the deceased. This important fact was not reported to the police till 12.03.2008; when written report (Exhibit P-1) was filed by Gyan Chand to police. There is no explanation for not disclosing this important fact of the oral dying declaration of his daughter for about 7 days to anybody. It is also important that after the death of Meena Devi in the night of 05th March 2008 proceedings under Section 174 CrPC were conducted. At that time, memo of dead-body was prepared in the presence of five witnesses, some of whom also belonged to Bhatinda but the so called dying declaration of the deceased was not disclosed by anybody.

There is no illegality in the impugned judgment The learned trial Court was absolutely justified in not placing reliance upon the alleged dying declaration of Meena Devi before her father. The alleged dying declaration is totally afterthought, on the basis of which, accused could not have been convicted under Section 302 IPC. No description has been given of the manner in which she was burnt by the accused. It is also relevant to mention here that after investigation, charge-sheet was filed not under Section 302 IPC but filed under Sections 306 & 498-A IPC only. Charge under Section 302 IPC had been amended on the prayer of the complainant Gyan Chand during trial. It is true that Meena Devi sustained burn injuries in unnatural circumstances but presumption under Sections 113-A & 113-B of the Indian Evidence Act could not be applied against the accused since the incident took place after 7 years of marriage of Meena Devi with Manoj and for total absence of evidence of cruelty soon before death.

After perusal of the record, fact of committing suicide by the deceased may not be denied but again for convicting the accused under Section 306 IPC, there must be evidence on record which indicates that suicide was committed on the instigation or abetment of the accused. In the present case, prosecution has not put forward any convincing evidence, which could suggest that Meena Devi committed suicide on the instigation of the respondents herein. There is also no evidence on record to suggest that this suicide was a direct result of any cruelty committed with the deceased by respondents. The evidence available on record emphasizes on the theory of murder of Meena Devi by the respondents, which has been found totally false. Prosecution evidence does not disclose any act of cruelty in between 21.10.2007 to 05.03.2008. Gyan Chand in his evidence did not allege regarding any cruelty towards Meena Devi during above period. On this point, Gyan Chand stated that post the compromise, Meena Devi went to her matrimonial home at Hanumangarh and after that she used to tell on telephone that accused are very greedy and treated her with cruelty. On 25.02.2008, Manoj and Jagdish came to Bhatinda with Meena Devi and demanded Rs.3,00,000/- for business. He borrowed Rs.2,50,000/- from Hardev and gave it to Manoj and Jagdish in presence of Darshan Singh. In our considered opinion, this statement cannot be considered an act of cruelty, on the basis of which, one may be punished for offence under Sections 498-A & 306 IPC. The statement does not inspire confidence. Learned trial Court has rightly disbelieved this part of evidence; Hardev has not been produced by prosecution. Neighbours of the matrimonial home of the deceased - Satpal PW1, Navdeep PW2 and Preetam Kumar PW3 have also not supported the prosecution story. There is no error in the impugned judgment, whereby, respondents have been acquitted of the offences.

In view of the above circumstances, the criminal appeal fails and consequently dismissed at admission stage.