
(2015) 04 RAJ CK 0055

In the Rajasthan High Court

Case No : Criminal Appeal Nos. 947/2008 and 78 of 2009

Kamruddin and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 324, 34, 452
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xii), 3(2)(v), 3(I)(xii)

Citation : (2015) 04 RAJ CK 0055

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Nisha Gupta, J

Bench : Division Bench

Advocate : Ashvin Garg, for the Appellant; Aladeen Khan, Public Prosecutor,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

1. Kamruddin s/o. Allah Bandha and Mohd. Shafeeq s/o. Chhitar Khan were tried by the court of Additional Sessions Judge, Sawaimadhopur.

2. The case of the prosecution is that on 13.8.2006 at about 12:00 A.M. in the night in village Choth Ka Barwada, the appellant Kamruddin along with his co-accused Mohd. Shafeeq had trespassed into the house of the deceased, Sonia, daughter of Ramesh. It is the further case of the prosecution that due to some chemical like acid thrown by Kamruddin, Sonia died on 14.8.2006, resulting into commission of offence punishable under Section 302 IPC. It is further case of the prosecution that the accused Kamruddin had also thrown chemical like acid on the person of Mana (P.W. 1), mother of the deceased Sonia and Mala (P.W. 3) her neighbour and thereby committed the offence punishable under Section 324 IPC. The accused were also charged for the commission of offences under Section 3(1)(xii) and 3(2)(v) of SC/ST Act. The co-accused of the appellant, Mohd. Shafeeq was tried with the aid of Section 34 IPC.

3. The trial court vide impugned judgment dated 6.8.2008, acquitted the co-accused Mohd. Shafeeq, but convicted the appellant Kamruddin for the offences under Sections 452, 302 and 324 IPC. However, the appellant was acquitted of the provisions of the SC/ST Act.

4. Having convicted the appellant for the aforementioned offences, the trial court vide a separate order of even date sentenced the appellant as under:-

U/s. 302 IPC-to undergo life imprisonment and to pay a fine of Rs. 25,000/-, in default of payment of fine, to further undergo three month S.I.

U/s. 452 IPC-to undergo three years R.I. and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo one month S.I.

U/s. 324 IPC - to undergo one year R.I. and to pay a fine of Rs. 200/-, in default of payment of fine, to further undergo seven days S.I.

5. Aggrieved against the judgment of conviction and order of sentence, the appellant Kamruddin has preferred the present appeal praying that the impugned judgment rendered by the court of Additional Sessions Judge, Sawaimadhopur be set aside along with the order of sentence.

6. The State of Rajasthan has also preferred an appeal [D.B. Criminal Appeal No. 78/2009] challenging the acquittal of the co-accused Mohd. Shafeeq. Since in both the appeals, common impugned judgment has been assailed, both appeals shall be decided by us together.

7. In the present case, the statement of the deceased, Sonia (Exhibit-P/30) was recorded by Deen Dayal Bhargava (P.W. 19), who was then posted as SHO, P.S. Choth Ka Barwada Deen Dayal Bhargava (P.W. 19) in the court deposed that on 13.8.2006, he was posted as SHO, P.S. Choth Ka Barwada. In the night at around 12:30 A.M., he was standing near administrative wing for patrol duty along with police party. Meanwhile, one jeep stopped near the gate of the building and two persons alighted from the vehicle. While going near the jeep, this witness found that one lady in burnt condition was lying on the floor of the jeep. Ramesh Kanjar (P.W. 2) and Lakhan Lal (P.W. 5) were accompanying two women. The name of the lady having burn injuries was Sonia Kanjar and she was the daughter of Ramesh Kanjar (P.W. 2). Then this witness through two constables called the papers and recorded the statement of Sonia, daughter of Ramesh Kanjar, aged 22 years. The statement has been proved on record as Exhibit-P/30. On the basis of the said statement, a formal FIR (Exhibit-P/31) bearing No. 144/06 was registered at the Police Station Choth Ka Barwada, District Sawai Madhopur, for the offences under Sections 307, 452, 324 and 34 IPC and Section 3(I)(xii) and Section 3(2)(v) of SC/ST Act.

8. The statement (Exhibit-P/30) of Sonia, which was later treated as dying declaration, when translated into English reads as under:-

"Statement of Kumari Sonia, daughter of Ramesh by caste Kanjar, aged 22

years, resident of Kanjar Basti, Choth Ka Barwada, dated 13.8.2006, time 12:30 A.M.

At this time, Sonia in a burnt condition in a jeep has been brought in front of the police station. She stated that Kamruddin s/o. Allah Bandha, Musalman, resident of Choth Ka Barwada from the last 3-4 years has kept me as his wife. He has been visiting my house. I am having child aged 3-4 months from the lions of Kamruddin. Kamruddin suspect my fidelity. Earlier, in the day, Mohd. Shafeeq s/o. Chhitar Khan came to my house and after giving threat, he left the house. Then he came along with Kamruddin. Kamruddin came to me on the roof. Mohd. Shafeeq remained on the ground floor. On the roof, I was sitting along with my mother Mana and neighbour Mala. Kamruddin immediately on arrival started quarreling with me and said where is my child. Give me the child and I will not leave you. We made him understand and see reason. He demanded water. My mother went down stairs and brought water in a steel tumbler (Lota). Kamruddin took out a packet from the pocket of his pant and mixed the same in the water in tumbler (Lota) and saying that he will not leave my alive, he threw the liquid in the Lota upon my face due to which my face, chest and thighs were burnt. The drops of the liquid also fell on my mother and Mala. Kamruddin, after scaling wall ran away form the spot. Mohd. Shafeeq is also having hand in the incident. Both having consultations had burnt me. My father, mother and Lakhan Patel are taking me in a jeep for treatment. After pouring acid in the water same has been thrown at me. My clothes have also been burnt. The incident is of today night at 12:00 A.M.

9. In the present case, the incident has taken place in the intervening night of 12th and 13th August, 2006 and within fifty minutes of the occurrence, at 12:50 A.M., the FIR was registered at Police Station Choth Ka Barwada.

10. Dr. M.L. Kanwat (P.W. 9) on 13.8.2006, at 5:00 A.M., in the morning being posted as Medical Jurist examined Sonia and as per Injury Report (Exhibit-P/16) had noted the following injuries on her person:-

11. Dr. M.L. Kanwat (P.W. 9) further stated that Sonia was referred to Sawaimadhupur hospital by Primary Health Center, Choth Ka Barwada. This witness further admitted in the cross-examination that Sonia was not wearing any cloth.

12. Dr. Satya Narayan Agarwal (P.W. 10) being posted as Medical Officer at Primary Health Center, Choth Ka Barwada on 15.8.2006 examined Smt. Mana (P.W. 1) and as per injury report (Exhibit-P/17) found the following injuries on her person:-

"(i) Blackish brown eschar of burn soft and moist, 2 c.m. x 1 1/2 c.m. on left ant-aspect of abdomen.

(ii) Blackish brown eschar of burn soft moist, 3 c.m. x 1/2 c.m., right ant-aspect of abdomen.

(iii) Blackish brown eschar of burn soft moist abraded at places, 6 c.m. x 3 c.m., 4 c.m. x 4 c.m., 3 c.m. x 1 c.m. on anterior aspect of upper 1/3rd of right leg.

(iv) Blackish brown eschar of burn soft moist, 5 c.m. x 3 c.m., on middle 1/3rd of right leg anterior aspect.

(v) Blackish brown eschar of burn soft and moist, 4 c.m. x 1/2 c.m., 3 c.m. x 1 1/2 c.m., on anterior aspect of left leg upper 1/3rd.

13. Dr. Satya Narayan Agarwal (P.W. 10) on 13.8.2006 at 1:35 P.M., had also examined Mala (P.W. 3) and as per injury report (Exhibit-P/18) found the following injury on her person:-

Burn, superficial with blackish charged a scar in medial half part, easily removed moist and soft, no slough, 2 c.m. x 1/2 c.m. x 1/4 c.m., on left cheek."

14. Dr. Satya Narayan Agarwal (P.W. 10) on 19.8.2006 at about 7:20 P.M., had also examined the accused-appellant, Kamruddin and as per injury report (Exhibit-P/19) noted the following injury on his person:-

"Eczematous skin size 4 c.m. x 1 1/2 c.m. present on lateral aspect of left foot."

15. This witness on 21.8.2006 at 6:20 P.M., had again examined the accused-appellant Kamruddin and had also noted the same injury.

16. Dr. Kedar Prasad (P.W. 20) was posted as Medical Jurist at SMS Hospital at Jaipur. According to the bed-head ticket, on 14.8.2006 at 2:35 AM, Sonia expired at SMS Hospital, Jaipur. This witness on 14.8.2006 at about 1:00 P.M., had conducted the autopsy on the dead body of the deceased Sonia (Exhibit-P/32) and had found 70% burns on her body. This doctor further noted that the nature of the burn injuries were corrosive. In cross-examination, this witness stated that the burn injuries received by the deceased, Sonia can be caused by acid used for cleaning toilet and same can also be used for committing suicide.

17. Ramesh (P.W. 2) in the court stated that he knew both the accused, namely Kamruddin and Mohd. Shafeeq. This witness stated that the deceased, Sonia was his daughter. Both the accused had thrown acid upon her. This witness further stated that his daughter Sonia was staying in Bombay, where she was employed as a dancer at a Dance Bar. Earlier she gave birth to two daughters, who had died. This witness stated that Sonia had come for delivery of the child. When she came from Bombay, she was carrying a child aged six months in womb. She was also having one child. Earlier, Mohd. Shafeeq used to come to Sonia. He had made her as a sister. Then Kamruddin started coming. Two - three days ago, Sonia had demanded money from Kamruddin as the child was sick. Kamruddin stated that he will not give any money as she is having physical relations with other man. This witness stated that a quarrel had ensued between them on 12.8.2006. Kamruddin came in the day at 2:30 P.M. and left a threat that he will pour acid upon her daughter. Thereafter, he left the spot. Then at 10:00 P.M., Mohd. Shafeeq came followed by Kamruddin. Kamruddin told that when Shafeeq

come he will give Rs. 500/- and do not make any quarrel. At that time, one Lokesh Raigar was also accompanying him and then they both left the house. At around 11:30 P.M., Shafeeq and Lokesh came. They said that Kamruddin will come. After sometime, Kamruddin came. This witness stated that Shafeeq sat with him and Kamruddin went upstairs. Kamruddin asked for water on the roof. The wife of this witness (P.W. 2) took water in a tumbler (Lota). This witness stated that Mala, a neighbour was also sitting on the roof. Mala is also her niece. This witness stated that he was sitting at ground floor. This witness stated that he learnt from the ladies that Kamruddin had poured something in the water tumbler and had thrown acid. The acid had also burnt thighs of his wife and cheeks of Mala. This witness stated that meanwhile his sister Reshma (P.W. 4) and Lakhan Lal (P.W. 5) also came. The whole village had gathered. This witness called for jeep of Kailash and came to police station, where SHO recorded the statement of his daughter, who was coherently speaking.

18. Lakhan Lal (P.W. 5) also stated that he is residing at Kanjar Colony and he is called as Patel of the colony. This witness further stated that functions of Patel are to look after the welfare of the members of the society. This witness stated that in the night at about 12:00 A.M., Ramesh (P.W. 2) came to him and informed that Kamruddin had poured acid upon his daughter. This witness accompanied Ramesh (P.W. 2) to his house and found that Sonia was badly burnt. Then this witness brought Sonia along with Ramesh (P.W. 2) and her mother to police station, where Deen Dayal Bhargava (P.W. 19) had recorded the statement of the deceased Sonia. Then Sonia was sent to Sawai Madhopur Hospital and from there she was referred to Jaipur. This witness stated that in his presence Jagdish Meena (P.W. 8) had taken photographs of the spot.

19. Thus, Ramesh (P.W. 2) and Lakhan (P.W. 5) corroborate recording of dying declaration.

20. Reshma (P.W. 4) in the court deposed that Sonia was her niece. She was daughter of her elder brother Ramesh (P.W. 2). Ramesh was staying in the neighbourhood. This witness further stated that Sonia had demanded money from Kamruddin and on refusal of Kamruddin to pay money, a quarrel had taken place. This witness further stated that in the day, Kamruddin had left the house after leaving a threat that he will finish Sonia. This witness stated that she was at her house and later she learnt that the accused had poured acid on Sonia, due to which her Bhabhi also received burn injuries.

21. In the present case, Mana (P.W. 1) mother of the deceased and Mala (P.W. 3) neighbour are eyewitnesses of the occurrence and in the occurrence they have also received burn injuries.

22. Both the eyewitnesses, namely Mana (P.W. 1) and Mala (P.W. 3) in the categorical terms have stated that the accused, Kamruddin after calling Sonia had poured liquid from a tumbler on Sonia. They further stated that Kamruddin after taking packet from his packet had mixed the same in the water. They stated that

the drops of acid fell on the thighs of Mana (P.W. 1) and on the cheeks of neighbour, Mala (P.W. 3). They further stated that Ramesh (P.W. 2) husband of Mana (P.W. 1) was on the ground floor.

23. Mana (P.W. 1) in cross-examination stated that she never restrained Sonia regarding visiting of the persons to her. This witness further stated that Sonia had demanded Rs. 500/- from Kamruddin. This witness further stated that Sonia was not doing the work of prostitution but sometimes one or two persons used to visit her and she used to take money from said persons. The exact words of the witness are as under:-

24. Mana (P.W. 1) further stated that due to falling of the drops, her petticoat was burnt and she had also received burn injuries on thighs and feet. This witness further stated that Sonia has also delivered a child and she was not having any husband.

25. This witness (P.W. 1) further stated that she had not seen the contents of the packet, which was poured in the tumbler and she cannot say whether the same was liquid or a powder. This witness (P.W. 1) further stated that Sonia wanted to go to Bombay but she had told her that since her child is only three months old, she should not go.

26. Mala (P.W. 3) has also reiterated that the accused Kamruddin took out a packet from the pocket of his pant and mixed the same in the water in a tumbler and then accused called Sonia and threw the acid on her face. This witness further stated that Sonia had raised a cry that her eyes had gone. This witness further stated that Kamruddin and Shafeeq ran away from the spot.

27. We need not notice the testimony of various other witnesses.

28. Mr. Ashvin Garg, the learned counsel for the accused-appellant submitted that in the present case, child was not recovered and the prosecution has failed to prove marriage. Thus, taking the statement of the witness, Mana (P.W. 1), mother of the deceased with pinch of salt, we should conclude that the deceased Sonia was not having good character and she was engaged in prostitution and her mother had facilitated prostitution. Therefore, the witness being not of good character, we should discard her testimony. It is further stated that the statement of the deceased, Sonia was recorded by the Investigating Officer and the same was not attested by the doctor. Therefore, we should not treat her statement as dying declaration. It is further contended that the prosecution has not gathered any evidence as to from where the appellant had procured the acid.

29. Mr. Alladdeen Khan, the learned Public Prosecutor has submitted that the trial Judge has rightly convicted the appellant Kamruddin. The learned Public Prosecutor further stated that from the testimony of the witnesses it is apparent that Mohd. Shafeeq was also actively involved in the crime. He had accompanied accused Kamruddin and had also left the spot with the principal accused. It is further stated that Mohd. Shafeeq had detained Ramesh (P.W. 2), father of the

deceased, Sonia on the ground floor and thus, facilitated the crime.

30. We have given our thoughtful consideration to the rival submissions advanced by the learned counsel for the parties.

31. The witnesses have come to the court with clean hands and they have not suppressed any fact, rather they have been forthright they have made no attempt to hide anything from the court. The mother of the deceased, Sonia has stated that the deceased was dancer in a bar at Bombay. Sonia, the deceased was having a relationship with Kamruddin and also engaged in prostitution. Thus, merely on this score that the witnesses do not follow the moral standards prescribed by the society, we cannot say that they are not truthful.

32. In the present case, acid was thrown at 12:00 A.M. on the intervening night of 12th and 13th August, 2006. Immediately, the information was relayed by Ramesh (P.W. 2), who was on the ground floor of the house to Lakhan Lal (P.W. 5), Patel of the society. Reshma (P.W. 4) sister of the father of the deceased, had also come at the spot. Thus, the testimony of the injured eyewitnesses namely Mana (P.W. 1) and Mala (P.W. 3) and the dying declaration which stands duly corroborated by Ramesh (P.W. 2), Reshma (P.W. 4) and Lakhan (P.W. 5) prove the case of the prosecution to the hilt. The medical evidence also corroborate the burn injuries due to throwing of some corrosive liquid.

33. In the present case, the FIR was very promptly lodged within fifty minutes. The deceased, Sonia had first gone to Primary Health Center, Choth Ka Barwada from there, to Sawaimadhopur, where she was examined at 5:00 A.M. Then she was referred to SMS Hospital, Jaipur and on the same night i.e. on the intervening night of 13th and 14th August, 2006, at 2:30 A.M., Sonia died. Her statement recorded promptly contains spontaneous version which is free from the blemish of contradictions and deliberations.

34. Mana (P.W. 1) and Mala (P.W. 3) have received injuries from the same liquid, which had caused injuries on the person of Sonia, the deceased. The case of the eyewitnesses, Mana (P.W. 1) and Mala (P.W. 3) regarding sufferance of injuries by them from the same liquid which had caused injuries on deceased Sonia, has been duly proved by the medical evidence.

35. Thus, taking totality of the circumstances, we are firmly of the view that we can place implicit reliance on the dying declaration (Exhibit-P/30), which is duly supported by the eyewitness account of Mana (P.W. 1) and Mala (P.W. 3) injured eyewitnesses. Even otherwise, the testimony of these two eyewitnesses is sufficient to maintain conviction of the appellant.

36. So far the acquittal of the co-accused, Mohd. Shafeeq is concerned, he has played no active role in the occurrence. It is the accused, Kamruddin alone who had gone upstairs and had thrown liquid upon the deceased Sonia. The drop of which fell upon Mana (P.W. 1) and Mala (P.W. 3). At the time of occurrence, Mohd. Shafeeq was on the ground floor. Thus, we find no reason to disturb the

finding of acquittal recorded by the trial court qua Mohd. Shafeeq. The view formulated by the trial court is the one view which is possible in the facts and circumstances of the case and hence, we will not disturb the same.

37. As a result of above discussion, both the appeals preferred by Kamruddin and the State of Rajasthan being devoid of merit are dismissed.