
(2019) 08 RAJ CK 0239

In the Rajasthan High Court

Case No : Criminal Jail Appeal No. 1800 Of 2017

Sampat @ Gopal Lal Bairwa

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 201, 302, 304B, 306, 498A
Code Of Criminal Procedure, 1973 — Section 216, 313

Citation : (2019) 08 RAJ CK 0239

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : Kalu Ram Bhati, Amicus Curiae, SS Rajpurohit

Final Decision : Partly Allowed

Judgement

The present Jail Appeal has been received through the Superintendent, Central Jail, Ajmer. Mr. Kalu Ram Bhati, Advocate is hereby appointed as Amicus Curiae in this case to contest the case on behalf of the accused-appellant. His fee shall be paid by the Rajasthan State Legal Service Authority, Jodhpur as per rules.

Instant criminal Jail appeal has been filed by the appellant challenging the judgment dated 04.10.2017 passed by learned Additional Sessions Judge (Women Atrocity Cases), Bhilwara in Sessions Case No.52/2015 whereby, the learned trial court convicted the appellant for offence under Sections 498A & 306 IPC and sentenced as under :

Sec. 498A IPC: 3 Years RI and Fine of Rs.5,000/-, in default of fine three months S.I.

Sec. 306 IPC : 10 Years RI and Fine of Rs.10,000/-, in default of fine six months Additional S.I.

Both the sentences were ordered to run concurrently.

Brief facts of the case are that on 24.03.2015 the complainant Raju Lal

submitted a written report (Ex-P/11) at Police Station MGH, Chirghar to the effect that Nata marriage of his sister was solemnized with Sampat Lal about six years ago. After the marriage, Sampat Lal started cruelty with his sister and also demanded dowry. From the wedlock, his sister gave birth to a male child. On 23.03.2015 the complainant received an information that his sister was admitted to the hospital in burn condition. The complainant alleged that his sister was burnt by the accused-appellant.

On this complaint, the police registered the case against the accused-appellant under Section 304B IPC and started investigation. After investigation, the police filed challan against the present accused-appellant for offence under Sections 304B, 498A IPC before the court of Judicial Magistrate, First Class No.3, Bhilwara. Thereafter the case was committed for trial in the court of Additional Sessions Judge (Woman Atrocity Cases), Bhilwara. Thereafter, the charges of the case were framed against the accused-appellant. He denied the charges and claimed trial.

During the course of trial, the prosecution examined 16 witnesses and various documents were also exhibited. Thereafter, statement of the accused-appellant under section 313 Cr.P.C was recorded and no witness was examined on the defence side.

At the conclusion of the trial, learned Public Prosecutor filed an application under Section 216 Cr.P.C. for amendment of the charge, which was allowed and the trial court amended the charges and added offence under Section 304B in alternative 302 and 201 IPC. Again the witnesses were called and thereafter again statement of the accused-appellant under Section 313 Cr.P.C. was recorded and statement of DW-1 Rampali was also recorded.

Upon conclusion of the trial, the learned trial court vide impugned judgment dated 04.10.2017 acquitted the appellant for offences under Sections 302 R/w Section 304B and 201 IPC but convicted for offence under Sections 306, 498A IPC and sentenced as mentioned earlier. Hence this criminal Jail appeal against the conviction of the accused-appellant.

At the threshold, learned amicus curiae does not challenge the finding of conviction but it is submitted that the appellant is inside the jail since 16.05.2015 and so far he has suffered a sentence of more than four years out of total sentence of ten years for offence under Section 306 IPC. Counsel further submits that for offence under Section 498A IPC, the appellant has already served the sentence. In such circumstances, it is prayed that the substantive sentence awarded to the accused-appellant for the offence under Section 306 IPC may be reduced to the period already undergone by him.

On the other hand, the learned Public Prosecutor opposed the submissions made by the learned counsel for the accused-appellant. The learned PP submitted that there is neither any occasion to interfere with the sentence awarded to the accused appellant nor any compassion or sympathy is called for in the said case.

Since the appellant's counsel does not challenge the appellant's conviction, this Court need not go into the merits of the case and accordingly, the conviction of the accused-appellant as recorded by the learned trial court for the offence under Sections 306 & 498A IPC is maintained.

I have perused the evidence of the prosecution as well as defence and the judgment passed by the trial court regarding conviction of the accused-appellant.

It is not disputed that the occurrence has taken place in the year 2015 and the accused-appellant has so far undergone a period of more than four years incarceration out of the total ten years' rigorous imprisonment for offence under Section 306 IPC so also suffered the agony and trauma of protracted trial. Thus, looking to the over-all circumstances and the fact that the accused-appellant has remained behind the bars for some time, it will be just and proper if the sentence awarded by the trial court for offence under Section 306 IPC is reduced to the period already undergone by him while maintaining the amount of fine in the sum of Rs. 10,000/-.

The Hon'ble Supreme Court in the case of in Sudarshan Kumar Vs. State of Haryana [2011(Suppl.) Cr.L.R. (SC)48] while maintaining the conviction for offence under Section 306 IPC, reduced the sentence of 7 years' R.I. of the accused to the period already undergone by him i.e. 5 years. In the aforesaid judgment, the Hon'ble Supreme Court held as under :

"It is natural that everyone wants children, but if a woman does not have a child that does not mean that she should be insulted or harassed. In such a situation, the best course would be to take medical help, and if that fails, to adopt a child. Experience has shown that an adopted child gives as much happiness to the adoptive parents as any natural child does. Hence, we see no justification to condone such an act of harassing or tormenting a woman just because she did not give birth to a child. It may not be the fault of the wife that she did not have a child. At any event, that is no justification for tormenting or beating her, and this reveals a feudal, backward mentality.

Accordingly, we uphold the conviction of the appellant recorded by the courts below but keeping in view the fact that the appellant has already undergone about five years rigorous imprisonment out of seven years, as submitted by the learned counsel for the appellant, we deem it appropriate to reduce the sentence to the period already undergone by him."

Similarly in the case of Anusuiya @ Saraswatibai (Mst.) & Anr. Vs. State of Madhya Pradesh [2018 Cr.L.R. (SC) 136] the Hon'ble Supreme Court while maintaining the conviction for offence under Section 306 IPC, reduced the sentence of 7 years' R.I. of the accused to the period already undergone by him i.e. 5 years.

Accordingly, the criminal jail appeal is partly allowed. While maintaining the appellant's conviction and sentence for offence under Sections 306 & 498A IPC,

the sentence awarded to him for offence under Section 306 IPC is reduced to the period already undergone by him, however the amount of fine imposed by the learned trial court is hereby maintained. In default of payment of fine, the appellant shall undergo six months' S.I. The sentence for offence under Section 498A IPC has already been served by the accused-appellant. The appellant is in jail. He may be released forthwith on deposition of the fine amount, if not required in any other case.

The record of the trial court be sent back forthwith.