
(2019) 07 RAJ CK 0007
In the Rajasthan High Court
Case No : Criminal Appeal No. 208 Of 2018

Smt. Sayra Bano And Ors	Vs	APPELLANT
State Of Rajasthan		RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304B, 307, 498A
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 07 RAJ CK 0007

Hon'ble Judges : Sabina, J; Narendra Singh Dhaddha, J

Bench : Division Bench

Advocate : Harendra Singh Sinsinwar, Rajesh Choudhary, Javed Choudhary

Final Decision : Disposed Off

Judgement

Appellants had faced trial under Section 498-A, 304-B in alternative Section 302 Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.") in

FIR No. 568 dated 24.08.2014 registered at Police Station Jhotwara, District Jaipur (South).

Prosecution case was set in motion on the basis of statement of Shabana Bano (since deceased) recorded on 24.08.2014. Victim stated that she was

married in the year 2010. After her marriage her mother-in-law Sayra Bano and sister-in-law Heena Bano used to harass her on account of demand

of dowry. Her husband had never harassed her on account of demand of dowry. No child was born to her out of her wedlock. On 23.08.2014 at about

8.00 p.m., she was working in the kitchen and the gas stove was on. Her father-in-law was sitting outside and was taking his meals, whereas, her

husband had gone out for work. Her mother-in-law threw kerosene oil on her and as a result she caught fire because the gas stove was on.

On the basis of the statement of the victim, formal FIR was registered under Section 498-A, 307 I.P.C. Statement of the victim was recorded by the

Magistrate on 24.08.2014, wherein, victim stated that Sayra Bano was her mother-in-law and Heena Bano was her sister-in-law and they used to

harass her. On the day of occurrence, her sister-in-law said something to her mother-in-law and due to this reason both of them quarrelled.

Thereafter, she (victim) came in the kitchen quietly. Her mother-in-law and sister-in-law came in the kitchen and threw kerosene oil on her and as a

result, she suffered burn injuries. Kerosene oil had been thrown on her by her mother-in-law.

Victim died on 29.08.2014.

After completion of investigation and necessary formalities, challan was presented against the appellants.

Trial Court framed charges against the appellants under Section 498-A, 304-B in the alternative Section 302 I.P.C. Appellants did not plead guilty and claimed trial.

In order to prove its case, prosecution examined seventeen witnesses, during trial. Appellants when examined under Section 313 Code of Criminal

Procedure, 1973, after the close of prosecution evidence, prayed that they were innocent and had been falsely involved in this case. Appellants

examined two witnesses in their defence.

Learned Trial Court ordered the conviction of appellants under Section 498-A I.P.C. and sentenced them to undergo rigorous imprisonment for two

years and a fine of Rupees five thousand each and it was further ordered that in case of default of payment of fine, they shall further undergo rigorous

imprisonment for two months. Appellants were also convicted qua offence punishable under Section 302 I.P.C. and were sentenced to undergo

imprisonment for life and fine of Rupees ten thousand each. It was further ordered that, in case of default of payment of fine, appellants shall further

undergo rigorous imprisonment for two months. Appellants were acquitted qua charge framed against them under Section 304-B I.P.C. Hence, the

present appeal by the appellants.

Learned counsel for the appellants has submitted that appellants were liable to be acquitted as they had been falsely involved in this case. No reliance

could be placed on the statement made by the victim before the police or before

the Magistrate as the same was a tutored one. Relatives of the victim were present at the time of the recording of her statement Exhibit P-3 as well as Exhibit P-13. Appellant Heena Bano was a young unmarried girl aged about eighteen years at the time of the incident.

Learned state counsel has opposed the appeal.

Admittedly, victim was married to Javed, son of appellant no.1 and brother of appellant no.2 in the year 2010. Victim has died on account of burn

injuries. There is no dispute regarding the said fact also. Moreover, as per Exhibit P-9 postmortem examination report, the cause of death of the

deceased was septicemic shock brought about as a result of antemortem dry heat flame burns sufficient to cause death in ordinary course of nature.

Deceased had suffered burn injuries in the kitchen.

The question that requires consideration is, as to whether, the deceased had accidentally suffered burn injuries or she had been set on fire as per the

prosecution version. Incident in the present case had occurred on 23.08.2014 at about 8.00 p.m. Statement of the victim was recorded on 24.08.2014

at about 3.50 p.m. Victim has specifically stated in her statement that she was being harassed by the appellants on account of demand of dowry. She

has further stated in her initial version Exhibit P-3 that kerosene oil had been thrown on her by her mother-in-law while she was working in the kitchen

and she caught fire as the gas stove was on. Although, victim has alleged that she was being harassed by the appellants on account of demand of

dowry, but so far as the factum of throwing of kerosene oil on the victim is concerned, the said allegation has been attributed by her to her mother-in-

law in her statement Exhibit P-3 recorded by the police. Before the Magistrate statement of the victim was recorded on the same day i.e., 24.08.2014,

wherein also she has stated that she was being harassed by her mother-in-law and sister-in-law. Initially, she stated that kerosene oil had been thrown

on her by her mother-in-law and sister-in-law while answering question no.2, but in the later part of her answer she has clarified that the kerosene oil

was thrown on her by her mother-in-law. The dying declarations made by the deceased Exhibit P-3 and Exhibit P-13 inspire confidence. The victim

who had suffered serious burn injuries has not involved her husband or her father-in-law in this case, but has levelled allegations against her mother-in-

law and sister-in-law only.

PW-1 Madroop Ali, PW-2 Madan Singh have not supported the prosecution case, during trial.

PW-3 Begam Bano, mother of the deceased deposed that her daughter Shabana was married to Javed about five years prior to the recording of her

statement. After her marriage, Shabana used to be harassed by her mother-in-law and sister-in-law on account of demand of dowry. They had raised

demand of Rupees two lacs and a motor-cycle. The said fact had been told by her daughter Shabana. In August 2014, she had received information

that her daughter had been set on fire. She along with other family members had gone to the hospital to meet her daughter. Shabana had told her that

she had been set on fire by pouring kerosene oil on her by her mother-in-law and sister-in-law.

PW-4 Rustom, maternal grand father of the deceased and PW-17 Pappu Khan, uncle of the deceased have corroborated the statement of PW-3.

PW-8 Dr. Deepali Pathak and PW-14 Dr. Dharmendra Kumar Sharma have proved the postmortem examination report Exhibit P-9.

Remaining witnesses examined by the prosecution are with regard to the investigation conducted by the police officers.

Appellants have examined DW-1 Munshi Khan and DW-2 Mohd. Bilal in their defence. The said witnesses have deposed that the appellants had not

harassed the deceased on account of demand of dowry. Rather Shabana had set herself on fire.

Thus, from the statements of PW-3, PW-4 and PW-17 and the dying declarations suffered by the victim, it is evident that she was being treated with

cruelty in connection with demand of dowry by her mother-in-law and sister-in-law. Statements of DW-1 and DW-2 fail to rebut the statements of

PW-3, PW-4 and PW-17 and the dying declarations suffered by the deceased. It appears that the defence witnesses being neighbours of the

appellants have deposed in favour of the appellants. Rather statements of PW-3, PW-4 and PW-17 being natural inspire confidence. The dying

declarations suffered by the deceased corroborate the statements of witnesses PW-3, PW-4 and PW-17. Hence, learned Trial Court has rightly

ordered the conviction of the appellants under Section 498-A I.P.C.

So far as the offence falling under Section 302 I.P.C. is concerned, although PW-3 has deposed that her daughter had told her that both the appellants

had poured kerosene oil on her, but the dying declarations suffered by the victim are otherwise. Victim has stated in her first dying declaration

recorded before the police that her mother-in-law had come in the kitchen and had poured kerosene oil on her and she had caught fire because gas

stove was on. In her dying declaration recorded before the Magistrate also she has specifically stated that kerosene oil had been poured on her by her

mother-in-law. In these circumstances, we are of the considered opinion that the learned Trial Court has rightly ordered the conviction of appellant

Sayra Bano under Section 302 I.P.C., but has erred in ordering conviction of appellant Heena Bano under Section 302 I.P.C. So far as allegation

falling under Section 302 I.P.C. is concerned, the same is not attributed to appellant Heena Bano by the victim specifically in her dying declaration.

Although, appellant Heena Bano had been treating the victim with cruelty in connection with demand of dowry, but it cannot be presumed that she

also must have assisted her mother in the commission of offence of murder of the deceased. Rather from the evidence on record, it transpires that the

murder of the deceased had been committed by her mother-in-law Sayra Bano by pouring kerosene oil on her which resulted in burn injuries to the

deceased. Hence, appellant Heena Bano is liable to be acquitted with regard to the charge framed against her under Section 302 I.P.C.

Accordingly, conviction and sentence of the appellant Sayra Bano under Section 498-A, 302 I.P.C. is maintained. Appellant Heena Bano is acquitted

qua charge framed against her under Section 302 I.P.C. Conviction of appellant Heena Bano qua offence punishable under Section 498-A I.P.C. is

maintained. However, keeping in view the facts and circumstances of the case, sentence of appellant Heena Bano under Section 498-A I.P.C. is

reduced from rigorous imprisonment from two years to rigorous imprisonment for one year and two months. Sentence qua fine is maintained.

Appeal stands disposed of accordingly.