

(2015) 10 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : SLAA No. D-129 of 2015 c/w Condl(cr.) No. D-115 of 2015

State

APPELLANT

Vs

Raja Rehbar

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Ranbir Penal Code, 1989 — Section 302

Citation : (2016) 2 JKJ 139

Hon'ble Judges : Mr. Bansi Lal Bhat and Mr. B.S. Walia, JJ.

Bench : Division Bench

Advocate : Mr. R.S. Durswal, Dy. AG, for the Appellant/Petitioner

Final Decision : Dismissed

Judgement

This appeal is directed against judgment dated 28.02.2015 passed by learned Sessions Judge Bhaderwah in File No. 27/ Sessions Challan titled

State v. Raja Rehbar and Ors. by virtue whereof respondent-Raja Rehbar (hereinafter referred to as accused) has been acquitted of offence

under Section 302 RPC. The impugned judgment has been assailed on the ground that the trial Court has failed to appreciate the prosecution

evidence and the conclusion drawn is against the weight of evidence. The impugned judgment has further been assailed on the ground that

important pieces of evidence have been ignored. It is contended that there is enough circumstantial evidence available on record which has been

duly corroborated by opinion of medical experts. It is, further contended that the direct and circumstantial evidence on record is sufficient to

convict the accused.

2. The appellant State prays for condonation of 101 days' delay in filing of appeal and also seeks special leave to prefer acquittal appeal in terms

of provisions of Section 417 Cr.PC.

3. Heard learned Dy. AG Mr. R S Duruswal and waded through the impugned judgment. Allegedly, the accused set ablaze his wife Sanam Ara. It

happened on 07.08.2008 at Kotli, Tehsil Bhaderwah in matrimonial home of deceased Sanam Ara who sustained 50 per cent deep burn injuries

on her body after the accused allegedly sprinkled petrol on her body and lighted a lighter to set her on fire. The deceased was removed to

Bhaderwah Hospital from where she was referred to SMHS Hospital Srinagar where she breathed her last after one month and nineteen days.

Allegedly, deceased was married to accused barely one year before the incident and the accused used to harass the deceased by putting up

demands of cash and a vehicle. Parents of accused too were alleged to have made similar demands resulting in harassment of deceased. It appears

that initially inquest proceedings under Section 174 Cr.PC were set in motion and the same culminated in registration of FIR against the accused

under Section 302 RPC. Subsequently parents of accused were also booked as the material assembled during investigation pointed out there

involvement as well. The investigation culminated in filing of Charge-sheet against the accused Raja Rehbar for offence under Section 302/498-

A/109 RPC whereas parents of accused were found involved in commission of offence under Section 498-A RPC. The case was sent for judicial

determination before the Trial Court where charges were framed against the accused Raja Rehbar for offence under Section 302 RPC whereas

parents of accused were discharged. The accused Raja Rehbar pleaded not guilty to the charges framed against him. Prosecution examined 20

witnesses at the trial to bring home guilt of the accused.

4. In so far as mode of proof adopted by prosecution to establish complicity of accused is concerned, there is no direct or indirect evidence on

record against the accused except oral dying declaration attributed to deceased. It is not disputed that the deceased died due to Septicaemic

shock on account of extensive burns sustained all over the body. This is proved by the entries in post-mortem certificate marked EX-PW RG

testified to by Dr. Rajesh Gupta. Dr. Mustaq Ahmed Mir Consultant Plastic Surgeon SMHS Hospital Srinagar, under whose treatment the

deceased remain admitted in the Hospital for about 50 days, proved the factum

of deceased having been admitted as a case of 50 per cent burns all over the body. It is in his testimony that the deceased developed Septicemia (infection) leading to her death on 26.09.2008. According to this witness, the injuries noted in certificate marked EXPW MA were sufficient to cause death. Cross examination of the witness unfolded that the deceased was fully stable and conscious during the treatment but never complained that she was set ablaze by somebody. The witness has further stated that the deceased got burn injuries due to some short circuit. According to the witness, the accused and his parents and relatives regularly attended to the deceased and the witness did not observe strained relations between the couple. The witness further stated that the accused too had suffered burn injuries on his hands and he was provided treatment. In his opinion injuries suffered by deceased could be possible by way of an accident. The witness further stated that the relatives of the deceased never complained of any foul play. The testimony of this witness has been relied upon by the trial Court to exclude the version emanating from prosecution witnesses Nasir Ahmad and Mohd. Asraf with regard to oral dying declaration allegedly made before them by the deceased immediately before her death in Srinagar Hospital.

PW Nasir Ahmad is the brother-in-law of deceased. He claimed to have visited the deceased in Srinagar Hospital on 24.09.2008 and enquired about the cause of her burning, The witness claimed that the deceased had told him that the accused sprinkled petrol on her body and set her ablaze. The deceased is said to have made this oral dying declaration in presence of Sabnam Nigar, Mohd. Yousuf and mother of the accused.

PW Sabnam Nigar is the mother of the deceased. She has not uttered a word about making of any dying declaration by the deceased before her death. PW Mohd. Yousuf is a close relative of deceased. He has stated that on enquiry from deceased regarding her burn injuries, the deceased remained quiet and did not utter a word. It is therefore empathetically clear that PW Sabnam Nigar and Mohd. Yousuf have not corroborated the testimony of PW Nasir Ahmad on the material particulars relating to oral dying declaration of deceased. PW Mohd. Asraf is the step brother of deceased. He deposed that he also went to Srinagar Hospital and after 4/5 days enquired from the deceased in regard to her burn injuries but the

deceased told him that she would narrate the incident after her recovery. The witness claims that he again visited the Hospital on 24.09.2008 when

the condition of deceased had deteriorated and the deceased disclosed before him that the accused used to harass her for a vehicle and had set

her ablaze after sprinkling petrol over her body. He proved FIR marked EXPW MA. Learned Sessions Judge, after marshalling the evidence of

aforesaid witnesses adduced by prosecution at the trial arrived at the finding that the deceased did not make any oral dying declaration in Srinagar

Hospital before her death and found that the testimony of PW-2 and 3 suffered from material contradictions and could not be relied upon.

Upon fathoming through the depths of impugned judgment we find that the testimonies of PW-2 and 3 in regard to factum of deceased having

confided in them the facts regarding the manner and circumstances in which she sustained the burn injuries have been rightly rejected by the trial

Court in view of the testimony of Dr. Mustaq Ahmad who was regularly providing treatment to the deceased and during interaction had gained

confidence of the deceased who told him that she got burn injuries due to short circuit. It is significant that no complain was made to Doctor by the

deceased over a lengthy period of 50 days for which the deceased remained admitted in Srinagar Hospital. It defies reason that the deceased

would confide in PWs 2 and 3 only and not in her mother, the Doctor treating her and the police officers conducting investigation to disclose the

cause of her burn injuries. On the aspect of reliability of these witnesses, learned Sessions Judge has noticed that these witnesses came forward

with a version of oral dying declaration of deceased after more than a month which casts serious doubts about the truthfulness of their version. This

is apart from the fact that their testimonies stand contradicted by other witnesses including mother of deceased. Learned Sessions Judge has

noticed that the closed relatives of deceased and the material witnesses have not made any specific allegations of demand of dowry qua the

accused. The evidence on record did not projected any demand of dowry and complying of such demand at the time of marriage. The evidence,

on the other hand, brings it to fore that the deceased enjoyed cordial relations with the accused and his parents who had returned articles given at

the time of marriage of the deceased. Learned Sessions Judge found that the demand in respect of Car was fabricated during trial and the same

had no basis. This very edifice of the prosecution version was bereft of substratum. This gets reinforced by the admission on the part of

investigating officer that there was no definite and conclusive evidence with regard to involvement of accused even after examination of the material

witnesses during investigation. The testimony of Dr. Mustaq Ahmad Mir knocks the bottom of the prosecution version by deposing that the

deceased had confided in him and told that she got burn injuries herself due to some short circuit and nobody was responsible for the same. This

statement in absence of motive against the witness would not permit brushing aside of his testimony and would bring the incident within the

embrace of an accident. This shakes the very foundation of culpability of accused.

5. On a careful scrutiny of the impugned judgment, we find no substantial and compelling reasons to depart from the finding recording by trial

Court. In our considered opinion, no contrary view is possible on evidence brought on record during trial. The evidence recorded by trial Court

cannot be termed erroneous, much less perverse. No legal infirmity on wrong appreciation of evidence is brought to our notice. We, accordingly,

concur with the impugned judgment. There being no merit in appeal, the same is dismissed. Prayer for condonation of 101 days' delay in filing the

appeal is accordingly refused and leave to prefer acquittal appeal is declined.

6. Disposed of.