
(2009) 05 SC CK 0269

In the Supreme Court Of India

Case No : Criminal Appeal No. 1377 of 2003

State of Punjab

APPELLANT

Vs

Rajwinder Singh @ Raja and Others

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2009) 8 SCALE 740 : (2009) 16 SCC 778

Hon'ble Judges : V. S. Sirpurkar, J; R. M. Lodha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant has come up here challenging the order of the High Court dismissing the appeal filed by the State in limine. In that appeal, the State Government has challenged the acquittal of the accused from the charges framed u/s 306/304B/34 of Indian Penal Code. The trial court had convicted the accused Rajwinder Singh only for the offence committed u/s 498A of Indian Penal Code.

2. Originally, as many as three accused persons were tried for the offence u/s 306/304B/34 and Section 498A of the Indian Penal Code. They being, Rajwinder Singh who was the husband, Nirmal Singh who was the father of accused No. 1 and Jasmail Kaur who was the mother of accused No. 1. Eventually, the trial court acquitted the accused No. 2 (Nirmal Singh) and accused No. 3 (Jasmail Kaur). Since the prosecution had not been able to prove the ingredients of Section 306 I.P.C., the trial court merely convicted the accused No. 1 (Rajwinder Singh) for an offence u/s 498A of Indian Penal Code. The acquittal from the offence u/s 306 is in challenge.

3. It is submitted by the learned Counsel appearing on behalf of the appellant that accused No. 1 (Rajwinder Singh) did not challenge the conviction and has undergone the sentence which was three years with a fine of Rs. 500/-. Be that as it may, now the question is as to whether the acquittal of all the accused

persons for the offence committed u/s 306 of the Indian Penal Code was justified or not.

4. We have closely examined the judgment. The prosecution case was that Rajwinder Singh, respondent No. 1 herein, was married to the deceased Paramjit Kaur alias Jeeta alias Sarabjit Kuar and she was illtreated by all the three respondents on account of dowry demands. The First Information Report was lodged by one Jagtar Singh, son of Amar Singh, resident of village Chhiniwal Khurd who was the brother of the decease Paramjit Kaur in which he alleged that his sister who was having a male child out of the wedlock was maltreated by accused No. 1 - Rajwinder Singh. He further alleged that his sister was being ill-treated by the accused persons, the respondents herein. He further alleged that he had gone to his sister's house on 11.12.2000 and on 12.12.2000, he received a telephonic call that Paramjit Kaur was beaten by Rajwinder Singh, Nirmal Singh and Jasmail Kaur and, therefore, the deceased Paramjit Kaur left the house along with her child at 6.00 A.M. and was not reported anywhere and, therefore, he was searching his sister but he could not get any clue and then he came to know that she along with her child had jumped in the canal and committed suicide. On this basis, further investigation started and the accused were charge sheeted for the offence u/s 304B and Section 306 of the Indian Penal Code.

5. On behalf of prosecution, Dr. Arun Kumar Gupta (P.W.1) was examined to prove the death by drowning. The other witnesses examined on behalf of the prosecution were P.W.3 -Amar Singh father of Jagtar Singh, P.W.4-Darshan Singh who was the ex-sarpanch of village Chhiniwal, Khurd. The other witnesses were investigating officers. On appreciation of evidence, we find that the defence also examined witnesses namely, D.W.1, Karam Singh, who had stated that Rajwinder Singh was married with Sarabjit Kaur and after marriage he maintained good relations with Sarabjit Kaur and he had never raised any demand of dowry articles from his wife and never harassed her on demand of dowry articles. He also deposed that after disappearance of Paramjit Kaur, the husband had been making enquiries about her disappearance.

6. On appraisal of the evidence, Ld. Addl. Sessions Judge came to the conclusion that the prosecution had not proved that Paramjit Kaur alias Jeeta alias Sarabjit Kaur was treated with cruelty or was harassed on account of demand of dowry as a result of which she had died unnatural death by jumping into the canal. The evidence of Jagtar Singh as also his father was not believed by the Ld.Addl.Sessions Judge. It was further found by the Ld. Addl. Sessions Judge that there was no ante mortem injury on the body of Paramjit Kaur on the basis of which Ld. Addl. Sessions Judge came to the conclusion that immediately before her death she was not subjected to the cruelty. The Addl.Sessions Judge also disbelieved the other witnesses and has given valid reasons for the same. The ingredients of Section 304B of the Indian Penal Code have also been appreciated and considered by the Addl. Sessions Judge and he came to the conclusion that the deceased was not treated cruelly nor was she subjected to

any violence prior to her death. Insofar as, the offence u/s 306 I.P.C. is concerned, the Addl. Sessions Judge came to the conclusion that there could not have been any abetment on the part of the accused for committing suicide by the deceased. The learned Addl. Sessions Judge also found that P.W.1 - Dr. Arun Kumar Gupta also admitted in his cross-examination that there was neither poison nor any injury found on the body of the deceased Paramjit Kaur. From all these circumstances, the learned Addl. Sessions Judge came to the conclusion that all that it was proved was that the accused and particularly accused No. 1 alone had committed the offence u/s 498A. He, therefore, acquitted the other two accused persons u/s 306 of the Indian Penal Code and convicted accused No. 1 (Rajwinder Singh) u/s 498A of the Indian Penal Code.

7. Learned Counsel appearing on behalf of the appellant-State argues before us that the Addl. Sessions Judge had not considered the ingredients of Section 113A of Evidence Act and further he has not given any reason as to why he had acquitted the accused persons u/s 306 IPC particularly when he had convicted the accused No. 1 for offence u/s 498A of the Indian Penal Code. In our opinion, the Addl. Sessions Judge had given good reasons as to why the presumption would not arise u/s 113A. The Addl. Sessions Judge has recorded the finding that there was no material to prove that there was any demand of dowry made by the husband or by father-in-law or by mother-in-law. Learned Addl. Sessions Judge has also further found that there was no material on record to prove that there was any cruelty meted out to the deceased Paramjit Kaur to commit suicide. We are generally satisfied with the order of the Sessions Judge and we have closely considered the judgment as also the evidence.

8. The High Court had not given reasons and had chosen to dismiss the said appeal in limine refusing the leave to file appeal against the acquittal. We are not happy with the course adopted by the High Court. Ordinarily, the High Court should have given good reasons even before refusing the leave to file an appeal against the acquittal. That is the established law now. However, sending back the matter again to the High Court would be hazardous as about ten years have elapsed since the death of the deceased. We have chosen to examine the records ourselves and we have, for that purpose, examined the correctness of the judgment of the Addl. Sessions Judge in the light of evidence. After overall consideration, we are of the view that the Addl. Sessions Judge was correct in acquitting the respondents -accused u/s 306 IPC and the High Court was also correct to refuse the State to file an appeal against the acquittal although the High Court should have given reasons. The appeal is accordingly dismissed.