

Mohar Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-16-2009

Reported in : RLW2010(1)Raj617

Judge : Mahesh Chandra Sharma, J.

Appellant : Mohar Singh and ors.

Respondent : State of Rajasthan

Judgement :

Mahesh Chandra Sharma, J.

1. The accused appellants have filed this appeal against the judgment and order dated June 15, 2004 of Additional Sessions Judge (Fast Track) Hindauncity Distt. Karauli whereby the accused appellants were convicted under Sections 498A and 304B IPC to suffer 2 years RI with fine of Rs. 2000/- each in default to suffer three months RI and 10 years RI. Sentence of accused appellant Bisso Devi was suspended by the order of this Court dated August 2, 2005 and since then she is on bail. Sentence of accused appellant Mohar Singh, who was aged about 75 years, was suspended by the order of this Court dated October 11, 2006 and since then he is on bail. Accused appellant Amrit Lal is in judicial custody and he has remained in judicial custody for more than 6 years and 3 months and 2 days as of today.

2. Brief facts of the case are that an fir was lodged by deceased's father Shriman on December 29, 2002 at Police Station Shrimahavirji. On the basis of the aforesaid fir the police registered case for the offences under Sections 147, 498A and 304B IPC. In the FIR it was stated that Mayadevi was married to accused appellant Amrit Lal on May 5, 1996. The informant stated that after marriage whenever Mayadevi reached to his village she complained that the persons in the in-laws family used to beat her for not bringing sufficient dowry. The informant stated that any how he sent his daughter to in-laws house. He reported this matter to Panchayat of the village also. Panchas of the village Panchayat satisfied him that the accused appellants will not repeat their acts in future. But in the morning at about 8.00 he received a telephonic message on December 29, 2002 that daughter Mayadevi was killed by her inlaws and they are going for cremation. He immediately made telephonic call to Police Station and upon this the police registered the case as mentioned above. After investigation the police filed challan before the court of Judicial Magistrate Shrimahaveerji and the same was committed to the Court of Additional Sessions Judge Hindauncity and which was transferred to the Court of Additional Sessions Judge (Fast Track) Hindauncity. The trial court framed charges under Sections 498A and 304B IPC against the accused appellants to which they denied and claimed to be tried. The prosecution in support of its case examined 10 witnesses and exhibited 24 documents. The statements of accused appellants under Section 313 Cr.P.C. were recorded and no witness in defence was produced. After hearing both sides the trial court by the aforesaid judgment dated June 15, 2004, convicted and sentenced the accused appellants as mentioned above. Against the said order, this appeal was preferred by the appellants.

3. Mr. U.P. Gaur and Mr. Mahendra Sandilya drawn attention of this Court on the case reported in Khem Chand @ Pappu and Anr. v. State of Rajasthan 2005 (2) WLC (Raj.) 290, wherein this Court held as under:

Penal Code, Sections 304B, 306, 498A-Conviction- Proper section-Sentence- No evidence of demand of dowry, yet in-laws of deceased were not satisfied with dowry and their cruel treatment had led deceased to commit suicide-Appellants liable to be convicted Under Section 306 - Omission to frame charge u/s. not

resulting in failure of justice- Conviction Under Section 304B set aside - Appellants convicted Under Sections 306 and 498A -Accused P a lady aged 54 years and already suffering custody for three months during investigation- Principal accused already suffering jail for six years- Sentence of both reduced to that already undergone.

Mr. Gaur learned Counsel further drawn attention of this Court towards Gurucharan Singh and Ors. v. State of Punjab, wherein it was held as under:

Penal Code (45 of 1860), Section 304B-Dowry Death- Sentence- Accused husband was only 17 years of age at time of incident whereas accused father in law and mother in law were old age and belonged to lower strata of society- Accused persons have undergone actual substantive sentence of seven years and five months-Sentence of life imprisonment reduced to one already undergone by them.

Reliance was also placed on K. Prema S. Rao and Anr. v. Yadla Srinivasa Rao and Ors. : 2003 CriLJ69 , wherein their Lordships of the Supreme Court held as under:

Penal Code, 1860- Section 304B - Dowry death- - One of the key ingredients of the offence, held, is that deceased must have been subjected to cruelty and harassment, held, is that deceased must have been subjected to cruelty and harassment 'in connection with the demand for dowry' shortly before her death- where father of deceased had given her as customary gift (pasupukumkuma:) at time of marriage, some land and a house site and 3 to 4 months after marriage Respondent husband had begun demanding that deceased execute deed transferring land and house site to him, and wife ultimately committed suicide, held, on facts offence of dowry death not made out because there was no evidence on record to indicate that the transfer had been demanded as dowry

Reliance was also placed on Pala Ram and Anr. v. State of Rajasthan , wherein this Court held as under:

Penal Code, Sections 302, 498A, 306 -Abetment - No direct evidence-Convicted a person Under Section 306 IPC in a charge Under Section 302 IPC- Due to harassment for dowry and beating by her husband, the deceased took poison and committed suicide- Trial Court convicted and sentenced Under Section 302 and 498A IPC-Held- In absence of direct evidence, the only course left is to hold that the prosecution has only proved suicide and provisions of Section 306 IPC are attracted- No failure of justice will result, if the accused appellant is convicted Under Section 306 IPC because evidence on record proved that the deceased took poison herself and committed suicide - Conviction altered to Under Section 306 IPC.

The learned Counsel drawn my attention towards the statements of the prosecution witnesses. Most of the prosecution witnesses have been declared hostile viz. PW.2 Rajshri Meena, PW.3 Madan Lal, PW.5 Sukhan and PW.9 Rajulal. Out of these witnesses most of them are in relation to the informant. Deceased Mayadevi was having illicit relation with one Harsu and due to this reason she committed suicide. So far as accused appellant Amritlal is concerned, he is in judicial custody for 6 years, 3 months and 2 days. Accused appellants Mohar Singh and Smt. Bisso Devi are parents of accused appellant Amritlal and they have attained age of 85 and 80 years. As per the prosecution case their cases come under Section 306 IPC instead of Section 304B IPC. Mr. Gaur learned Counsel contended that accused Mohar Singh remained in judicial custody for more than 3 years and 8 months and accused appellant Smt. Bisso Devi remained in judicial custody for more than 3 years. Learned Counsel prayed that they should be sentenced to the period already undergone by them.

4. The learned Public Prosecutor on the other hand opposed the submissions of learned Counsel for the appellants and stated that the court below after considering all the evidence, documents and record passed the order of conviction, and rightly sentenced the accused appellants. This impugned judgment of the trial court is just and proper and no interference is required to be called for in the impugned judgment.

5. I have heard the learned Counsel for the parties and gone through the entire record and judgment of the trial court. So far as merits of the case are concerned the learned Counsel appearing on behalf of the appellants during the course of arguments confined his arguments only for the purpose of reducing the sentence of appellant Amritlal from 10 years to 7 years for the offence under Section 304B IPC. In the facts and circumstance of the case, the conviction of appellants Mohar Singh and Smt. Bisso Devi under Section 304B IPC is set aside instead they are convicted for the offence under Section 306 IPC. Now the question comes what should be the sentence imposed upon them for this conviction. Accused appellant Mohar Singh remained in judicial custody for more than 3 years and 8 months and accused appellant Bisso Devi remained in judicial custody for 3 years. Ends of justice would be met if the accused appellants Mohar Singh and Smt. Bisso Devi are sentenced to the period already undergone by them in judicial custody for Section 306 IPC. I maintain the conviction and Sentence of the accused appellants for the offence under Section 498A and the judgment of the trial court is maintained in relation to this offence. The fine imposed by the trial court will be deposited by the accused appellants within a period of 3 months. So far as accused appellant Amritlal is concerned, I direct the Govt. to recommend/consider the matter of remission of sentence keeping in view the antecedents of the accused appellant in Jail and looking to his future.

6. For these reasons the judgment of the trial court is confirmed so far as conviction of the appellants under Section 498A is concerned. The judgment of the trial court is modified for other offence, as indicated below:

(i) The accused appellant Amritlal, who has been sentenced to 10 years RI under Section 304B IPC, his sentence is reduced to 7 years.

(ii) The State Government is directed to recommend/consider the matter of remission of sentence of accused appellant Amritlal, keeping in view his antecedents in Jail and looking to his future.

(iii) The accused appellants Mohar Singh and Smt. Bisso are convicted under Section 306 IPC instead of 304B IPC and they are sentenced to the period already undergone by them in judicial custody. They are on bail they need not surrender.

(iv) The fine should be deposited within a period of three months from the date of receipt of certified copy of this order.

7. The impugned judgment of the trial court stands modified as indicated above. This appeal is partly allowed.

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