

The State Vs. Jan Ali and ors.

The State Vs. Jan Ali and ors.

SooperKanoon Citation : sooperkanoon.com/902486

Court : Uttaranchal

Decided On : Feb-16-2010

Judge : Dharam Veer, J.

Appellant : The State

Respondent : Jan Ali and ors.

Disposition : Appeal dismissed

Judgement :

Dharam Veer, J.

1. This appeal, preferred by the State under Section 378 of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 22.2.1995 passed by IInd Additional Sessions Judge, Haridwar in S.T. No. 237/1992 State v. Jan Ali and Ors. whereby the learned IInd Addl. Sessions Judge acquitted the respondents-Jan Ali, Isruddin and Smt. Jamila for the charge levelled against them under Sections 498A, 304B and 323 read with Section 34 of The Indian Penal Code, 1860 (hereinafter to be referred as the IPC) and one under Section 3/4 of Dowry Prohibition Act, 1961 (hereinafter to be referred as the Act).

2. There is a report of the Chief Judicial Magistrate, Haridwar dated 29.4.2004 in which it has been stated that the respondent Isruddin has been died. Hence, the

appeal against respondent Isruddin stands abated.

3. Heard learned Counsel for the parties and perused the entire material available on record.

4. In brief, the prosecution story is that Ali Jan (PW1) moved an application to S.P., District Haridwar on 12.4.1992 with the averments that his sister Mesarjahan (since deceased) was married with the respondent/accused Jan Ali before two and a half years. In the marriage they had given dowry as per their status, however, the respondents/accused were the greedy persons and they started harassing his sister for bringing less dowry and also demanded Rs. 30,000/- cash and a colour television. It was further alleged that on 11.4.1992 at 02:00 PM when his parents went to meet his sister then the respondents/accused hurled abuses to his parents and made a demand of Rs. 30,000/- and a colour T.V. and also threatened for dire consequences for not fulfilling the said demand. Thereafter his parents returned to home. On the same day at 06:00 PM the respondents/accused set Mesarjahan (deceased) at fire by pouring kerosene oil on her. On hearing cries of Mesarjahan, Sharafat (PW4) and Meen Ahmed reached at the place of occurrence and when these persons tried to save her then the respondents/accused beat Sharafat. Thereafter the respondents/accused took Mesarjahan to the Government Hospital, Haridwar and after admitting her in the hospital the respondents/accused ran away from the hospital. On the information, they also reached at the hospital. It was further alleged that he went to lodge the report of the said incident but the Pathri Police refused to lodge it. With the same averments, he moved the application, scribed by Najakat Ali to S.P., District Haridwar on 12.4.1992. That application is Ext. Ka-1. On the basis of said application, Chik FIR of the case was prepared. The investigation of this case was entrusted to Sub Inspector Rajpal Sharma. Mesarjahan was medically examined by Dr. B.L. Verma (PW9), who after examining her prepared the injury report i.e. Ext. Ka-7. On 12.4.1992 at 12:35 AM, dying declaration of Mesarjahan was recorded by the then Tehsildar Sri Satish Chandra (PW8), which is Ext. Ka-5. On 17.4.1992, Mesarjahan succumbed to her burn injuries. Thereafter, inquest report was prepared which is Ext. Ka-2. Along with the inquest report, sketch of the dead body and other papers were also prepared. On 18.4.1992 at 08:50 AM, post-mortem of the dead body of the

deceased Mesarjahan was conducted by Dr. Rakesh Kumar (PW7), Medical Officer, H.M.G. Hospital, Haridwar. The post-mortem report is Ext. Ka-3. During the course of investigation, the I.O. recorded the statement of the witnesses and also prepared the site- plan of the place of occurrence. On completion of the investigation, the I.O. submitted the charge sheet against the respondents/accused.

5. Learned Ist Additional Munsif Magistrate, Haridwar committed the case to the court of Sessions on 4.8.1992 after giving necessary copies to the respondents/accused as provided under Section 207 Cr.P.C.

6. It appears from record that the case was then transferred to Additional Sessions Judge, Haridwar for hearing and disposal according to law.

7. On 2.4.1993, learned Additional Sessions Judge, Haridwar framed the charge of offence punishable under Sections 304B, 498A and 323 r/w Section 34 IPC and one under Section 3/4 of Dowry Prohibition Act, 1961 against the respondents/accused. The charge was read over and explained to each of the respondent/accused to which they pleaded not guilty and claimed to be tried.

8. In order to prove its case, the prosecution examined PW Ali Jan, brother of the deceased Mesarjahan and complainant of the case, PW2 Nazakat Ali, scribe of the report and witness of the inquest report, PW3 Iqbal, brother of the deceased, PW4 Sharafat, brother-in-law of the deceased, PW5 Yaseen brother of Sharafat (PW4), PW6 Ali Hasan, father of the deceased, PW7 Dr. Rakesh Kumar, Medical Officer, who conducted the post-mortem of the dead body of the deceased Mesarjahan, PW8 Satish Chandra, Tehsildar, who recorded the dying declaration of the deceased and PW9 Dr. B.L. Verma, who initially examined the injuries on the body of Mesarjahan (deceased).

9. Thereafter the statements of the respondents/accused were recorded under Section 313 Cr.P.C. The oral and documentary evidence were put to each of them in question form, who have denied the allegations made against them. However, they did not produce any oral or documentary evidence in their defence.

10. After appreciating the entire evidence available on record and hearing learned Counsel for the parties, learned IIInd Addl. Sessions Judge, Haridwar vide his judgment and order dated 22.2.1995 acquitted the respondents/accused as stated above. Against the said judgment and order, the State has preferred this appeal.

11. Before any further discussion, it would be pertinent to mention the ante-mortem injuries recorded in the post-mortem report. The post-mortem of the dead body of the deceased Mesarjahan was conducted by Dr. Rakesh Kumar on 18.4.1992 at 08:50 AM who also prepared the post-mortem report Ext. Ka-3. Following ante-mortem injuries were found on the dead body of the deceased:

- Ist to IIInd degree burn injury present on front of neck, front of chest and abdomen, left outer side of chest; genitalia; front of both thighs; both legs; front of right forearm and hand and left arm and left hand.
- The burn area is painted by Gentian violet.

Cause of death was toxemia due to ante-mortem burn injuries.

12. To prove the above-noted post-mortem report, the prosecution examined PW7 Dr. Rakesh Kumar, who has stated that on 18.4.1992 he had conducted post-mortem of the dead body of the deceased Mesarjahan. He has proved the post-mortem report Ext. Ka-3.

13. Initially on 11.4.1992 Mesarjahan (deceased) was medically examined by PW9 Dr. B.L. Verma, Medical Officer at H.M.G. Hospital, Haridwar, who prepared the injury Ext. Ka-7, which is reproduced as under:

(i) Ist and IIInd degree burn injury present in front of neck, chest and abdomen

- Left lat. Side of chest
- Genitalia, front of both thighs
- Both legs
- Right forearm front and hand

- Left arm and left hand

Burn area is red in colour

Blisters are present, hairs of genitalia are singed, hair of skull are singed.

G. C. - Low/restless

Pulse - 110/mt

Resp. - 22/mt

B.P. - 100/66mm Hg

Opinion - Patient is a case of burn injury, kept under observation, admitted in ward.

Duration fresh, police informed.

14. To prove the injury report Ext. Ka-7, the prosecution examined PW9 Dr. B.L. Verma, who has stated that on 11.4.1992 he was posted at District Hospital, Haridwar. On that day at 10 PM he medically examined Mesarjahan and found the above-noted injuries on her body. He has proved the injury report Ext. Ka-7.

15. To prove its case further, the prosecution has examined PW1 Ali Jan, who is the brother of the deceased and complainant of the case. He has proved the report Ext. Ka-1. In the cross-examination, he stated that the respondents have never made a demand of dowry from him and his sister had also never told him about the same. He further stated that her sister had never told him that she was ever tortured or harassed for dowry and his father has also never told him that the respondents/accused have demanded dowry. Upto the date of incident there were cordial relations between his sister and the respondents/accused. He admitted the fact that his sister was been hospitalized by the respondents/accused. Upto when they reached in the hospital, the respondents/accused were looking after his sister Mesarjahan. He further stated that Mesarjahan was not in a condition to speak and she remained unconscious till her death. Mesarjahan could not talk to him or his parents. He further stated that before them the Magistrate have not recorded the

statement of Mesarjahan and even she was not in a condition to give statement.

16. PW2 is Nazakat Ali, who is the scribe of the report Ext. Ka-1 and the witness of the inquest report. He has stated that the report was written by him in the hospital on the dictation of Ali Jan (PW1).

17. PW3 Iqbal, brother of the deceased, PW4 Sharafat, brother-in-law of the deceased, PW5 Yaseen @ Meen, brother of Sharafat (PW4) and PW6 Ali Hasan, father of the deceased have not supported the prosecution case and all of them were declared hostile by the trial court.

18. PW8 Satish Chandra has stated that on 12.4.1992 he was posted as Tehsildar at District Haridwar. On that day, he recorded the dying declaration of Mesarjahan (deceased) which is Ext. Ka 5. He has also proved the medical certificates Ext. Ka-4 and Ka-6.

19. Thereafter the statements of the respondents/accused were recorded under Section 313 Cr.P.C. The oral and documentary evidence were put to each of them in question form, who have denied the allegations made against them. However, they did not produce any oral or documentary evidence in their defence.

20. Sri M.A. Khan, learned Brief Holder for the State has submitted that on the basis of the evidence as discussed above, the prosecution has proved its case against the respondents/accused under Sections 304B, 498A and 323 r/w Section 34 IPC and further under Section 3/4 of the Act. I do not find force in the submission of learned brief holder for the State, due to following reasons:

(i) PW1 Ali Jan who is the brother of the deceased and who also lodged the report of the said incident has himself not supported the prosecution case in his cross-examination. It was stated by him that the respondents-accused had never demanded dowry from him and his sister had also never told him about the same. The deceased had never told him that she was ever tortured or harassed for dowry. It was also deposed by him that there were cordial relations between his sister and the respondents-accused. He admitted that his sister was been hospitalized by the respondents-accused and the respondents- accused were

taking care of Mesarjahan (deceased) till the time they reached in the hospital. It was also deposed by him that Mesarjahan was not in a condition to speak and she remained unconscious till her death. It was further stated that no statement of Mesarjahan was recorded by the Magistrate before them and even she was not in a condition to give statement.

(ii) PW3 Iqbal, brother of the deceased, PW4 Sharafat, brother-in-law of the deceased, PW5 Yaseen @ Meen, brother of Sharafat (PW4) and PW6 Ali Hasan, father of the deceased have not supported the prosecution case and all of them were declared hostile.

(iii) In the dying declaration, it has nowhere come that the respondents-accused have ever demanded dowry from Mesarjahan or her parents. Further, no specific allegation was made by her against her husband.

21. Learned Counsel for the respondents/accused has further submitted that where two views are possible and one of the view is possible which was taken by the trial court, then the appellate court should not ordinarily interfere with the judgment of acquittal. Reliance is placed on paras 7 and 8 of a judgment rendered by Hon'ble Supreme Court in the case of Kalyan Singh v. State of M.P. reported in (2007) 3 SCC (Cri.) 173, which read as under:

7. The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned trial judge cannot be said to be wholly unsustainable. It is now well known that if two views are possible, the appellate court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on record by the prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the trial court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible.

8. We, therefore, having regard to the fact situation of the instance case, are of the opinion that as two views are possible, the High Court should not have interfered with the judgment of acquittal passed by learned Sessions Judge. We, therefore, set aside the impugned judgment and allow this appeal. The appellant is in jail, he is directed to be released forthwith if not required in connection with any other case.

22. On the basis of the evidence discussed above, I am of the considered view that when one view is also possible as the view taken by the trial court, then as per the aforesaid judgment of Kalyan Singh (Supra), the view taken by the trial court must be accepted. Therefore, there is no reason to disagree with the view taken by the trial court on the basis of the evidence discussed above and, therefore, the prosecution has not able to prove its case against the respondents/accused beyond reasonable doubt.

23. Accordingly, the appeal is dismissed. The judgment and order dated 22.2.1995 passed by IInd Additional Sessions Judge, Haridwar in S.T. No. 237/1992 State v. Jan Ali and Ors. is confirmed.

24. Let the lower court record be sent back.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com