
(2016) 04 RAJ CK 0116

RAJASTHAN HIGH COURT

Case No: Cr. Appeal No. 136 of 1994

State of Rajasthan

APPELLANT

Vs

Ashok Nawal

RESPONDENT

Date of Decision: April 18, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304B, 498A

Citation: (2016) 4 CriLR 1735 : (2016) 3 RajCriC 1099 : (2016) 3 RLW 2371

Hon'ble Judges: Mr. Gopal Krishan Vyas and Mr. Goverdhan Bardhar, JJ.

Bench: Division Bench

Advocate: Mr. C.S. Ojha, Public Prosecutor, for the Petitioner; Mr. M.K. Garg, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mr. G.K. Vyas, J.—In this Cr. appeal filed by the State of Rajasthan the judgment dated 2.1.1993 passed by the learned Addl. Sessions Judge No.3, Jodhpur in Sessions Case No.57/1991 is under challenge, whereby the learned trial court acquitted the respondent from the charges levelled against him under Section 302, 304-B and 498A IPC.

2. As per the brief facts of the case on 13.6.1989 at 4.35 am in the morning an information was given in writing by respondent Ashok Nawal to the SHO Police Station Pipad city that in the night at about 12.00 am when I and my wife were sleeping in the house, he awaked upon hearing cry of his wife and found that his wife gone in the kitchen for taking hot water for her child where she was burning. The respondent Ashok Nawal further stated that he poured water by bucket on her and called neighbours and during rescue, her hands also burned. Upon above information, the SHO, Police Station Pipad city registered a report under Section 174 Cr.P.C. Upon information the SDO, Jodhpur commenced an inquiry. In the inquiry, the SDO, Jodhpur find that the respondent Ashok Nawal was harassing his wife Smt. Laxmi for dowry and due to cruelty he killed her wife by litting fire. After receiving inquiry report from the SDO Jodhpur, the SHO, Police

Station Pipad city registered an FIR No. 8 on 5.1.1990 against the respondent under Sections 302, 304B and 498A IPC for the incident took place in between the night of 12.6.1989 a .1989 and 13.6.1989.

3. After registration of the FIR, the respondent Ashok Nawal was arrested on 3.9.1990 vide Ex. p/25 and the documents of the inquiry conducted under Section 176 Cr.P.C. by the SDO Jodhpur were taken on record and investigating officer commenced further inquiry and on completion of investigation filed challan on the basis of inquiry conducted by the SDO, Jodhpur in the court of Munsif and Judicial Magistrate, First Class, Pipad city from where the case was committed for trial in the court of Sessions Judge, Jodhpur.

4. The Sessions Judge, Jodhpur transferred the case for trial in the court of Addl. District & Sessions Judge No.3, Jodhpur. The learned trial court framed charges under Sections 302, 304B and 498A IPC.

5. In support of prosecution case, statements of 20 witnesses were recorded. Thereafter, statement of respondent Ashok Nawal were recorded under Section 313 Cr.P.C., but respondent denied all the allegations and three witnesses DW-1 Mohan Lal, DW-2 Govind Narayan and DW- 3 Suresh Rathi were produced in defence. The learned trial court framed three points for adjudication which reads as under:

"1- D;k vfHk;qDr v"kkSD uoy }kjk viuh iRuh e`rdk Jherh y{eh ds lkFk ngst dh ekax dks ysdj funZ;rkiwoZd O;ogkj fd;k ,oa mls rax o ijs"kku fd;k\

2- D;k vfHk;qDr Jh v"kkSD uoy fnukad 12-06-1989 ls iwoZ viuh iRuh e`rdk Jherh y{eh dks ngst dks eky{eh dks ngst dh ekWax dks ysdj rax djrk Fkk ,oa mlds lkFk funZ;rkiw.kZ O;ogkj djrk Fkk] ftlds ifj.kkeLo:i "kknH ds 7 lky dh vof/k ds Hkhrj vlkekU; ifjLFr;ksa esa og ty xbZ ;k mls tyk;k x;k\ rFkk

3- D;k vfHk;qDr Jh v"kkSD }kjk mldh iRuh e`rdk Jherh y{eh dh gR;k dkfjr dh xbZ\"

6. And after discussing the entire evidence, the learned trial court acquitted the respondent from the charges levelled against him while holding that the prosecution has failed to prove its case beyond reasonable doubt vide judgment dated 2.1.1993.

7. In this appeal, the State of Rajasthan is challenging the said judgment on various grounds.

8. Learned Public Prosecutor vehemently argued that the finding arrived at by the learned trial court to acquit the respondent from the charges levelled against him is not in consonance with law. In fact, the prosecution has proved allegation of demand of dowry by leading reliable oral and documentary evidence. While inviting attention towards the statement of PW-5 Kishan Dutt it is submit that the said witness categorically stated in his statement that key of flat, Rs. 40,000/- and FDR of Rs. 50,000/- were demanded by the respondent as dowry, but the learned trial court disbelieved the testimony of PW-5 Kishan

Dutt without application of mind. The crux of the argument of the learned Public Prosecutor is that in spite of the cogent evidence on record, the learned trial court acquitted the respondent from the charges levelled against him, therefore, the judgment impugned may kindly be quashed and respondent may kindly be convicted for the offences committed by him. No other ground is raised by the learned Public Prosecutor.

9. Per contra, learned counsel for the respondent submits that no doubt was raised by any of the family members of the deceased. The information was given by the respondent himself to the police with regard to the incident, which is placed on record as Ex. P/17. Upon said information, proceedings under Section 176 Cr.P.C. was commenced upon information given to the higher officials of administration. The inquiry was commenced by SDM, Jodhpur upon information given by the respondent on 13.6.1989 at 4.35 am under Section 144 Cr.P.C. The body of the deceased was taken to the hospital for post mortem and medical board of Government Hospital, Jodhpur after conducting post mortem gave report Ex. P/14 on 16.6.1989 because deceased died during treatment on 15.6.1989. The learned counsel for the respondent submits that no trustworthy evidence is on record for the allegation of demand of dowry. All the letters Ex. D/1 to Ex. D/30 which are placed on record in defence by the respondent clearly reveal that the relations of the respondent and the deceased were cordial and there was no demand of dowry. More so, the respondent himself admitted the deceased in the hospital and during treatment she died but FIR was given by the in-laws to the Police Station for the allegation of dowry and cruelty for the simple reason that relations of respondent Ashok Nawal and deceased were good and the deceased died due to an accident. Therefore, the learned trial court after assessment of the entire evidence gave finding that prosecution has failed to prove its case beyond reasonable doubt.

10. After hearing the learned counsel for the parties, we have considered all the arguments and finding given by the learned trial court in the judgment impugned dated 2.1.1993. Admittedly, the information Ex. P/17 about incident was given by the respondent to the SHO Police Station, Pipad City on 13.6.1989 at 4.35 am. No FIR was filed by the in-laws because there was no quarrel in between the respondent Ashok Nawal and his wife. The incident took place in between the night of 12.6.1989 and 13.6.1989 and information Ex. P/17 was given immediately by the respondent upon which inquiry was conducted by the SDO, Jodhpur, but unfortunately, after six months on 5.1.1990 the police registered the case under Section 302, 304B and 498A IPC against the respondent upon the report submit by the SDO, Jodhpur. In the trial prosecution had relied upon letters Ex. P/4 and Ex. P/5 out of letters as evidence so as to prove the charge of aforesaid allegation against the respondent. On the contrary, number of documents Ex. D/1 to D/30, the communication in between the respondent and his in-laws were exhibited. We have perused all the communications and find that relations of deceased and respondent were cordial. There was no demand of dowry. The document Ex. P/4 and P/5 relied by the prosecution cannot be treated to be a evidence for demand of dowry because general talks are stated by the respondent being son-in-law in the

communication and these documents are of the year 1985 before 4 years of incident. No other evidence is on record to prove the allegation of demand of dowry for which the respondent can be held guilty. The letter Ex. P/4 dated 23.1.1985 and Ex. P/5 dated 25.12.1985 are as follows:

Ex.P/4

i=@2

iwT; ikikthA

Bombay/23/11/85

lknj pj.k Li"KZ

eSa ;gkWa ij iw.kZr;k dq"ky iwoZd gwWa vki lc dh dq"kyrk ijefirk ijes"oj ls usd pkgrk gWawA

dke dh O;oLFkrk dh otg ls i= ugha ns ikrk gwWaA

vkidk o eEehth dk LokLF; iw.kZr;k Bhd gksxk] InhZ dk fo"ks"k [;ky j[ksaA eSa nhokyh ij t;iqj tkdj vk;k FkkA ogkWa lHkh iw.kZr;k dq"kyiwoZd gSA

vkxs lekpkj ;g gS fd cksjhokyh okys edku ds ckjs esa D;k gqvk vkidks mlds cspus ds ckjs esa vkxs dksbZ lkekpkj ugha] vki gks lds rks mlds pkch fdlh ds lkFk fHktokus dh dksf"k"K djuk] esjk bZjknk tc rd og edku fcdrk ugha gS jgus dk gS rkfd eSa ml le; rd rks viuk fdjk;k cpk ldw] vkxs vkidh bPNk gS] eSa fnIEcj vUr rd Hkkjkanj esa Rs. 400/- eghuk fdjk;s ij edku ywaxk rFkk mlds ckn gh y{eh dks Bombay ykus dk bZjknk gSA bl ckcr~ i= dk tokc "kh?kz nsuk rkfd eSa Hkkjkanj esa edku ns[k ldaw~A

deyTh o HkkHkhth dks esjk izek.k dgukA "ks"K loZ dq"kyA

esjs ;ksX; lsok dk;Z fy[kuk] xyrh gks rks >ek djukA

vkidk iq=

v"kkSD

Ex.P/5

fnukad 25-12-1995

iwT; ikikth]

Bombay/23/11/85

lknj pj.k Li"KZA

eSa ;gkWa ij iw.kZr;k dq"ky iwoZd gwWa o vk"kk gS vki lc Hkh ogkWa ij iw.kZr;k dq"ky iwoZd gksaxsA

i= vkidk dy feyk] lekpkj Kkr gq;s esjk fQygky ,d fnu ds fy, Hkh vkWfQl ls NqV~Vh ysuk laHko ugha gS vU;Fkk eSa t:j tks/kiqj vkrkA fQj Hkh vxj laHko gqvk rks eSa tuojh esa dHkh Hkh vk tk ldrk gwWa fdarq og Hkh ,d fnu ls T;knk laHko ugha gksxkA fdarq ;g fQygky rks vlaHko gh yxrk gSA vki esjh fdlh izdkj dh fpark fQdj u djs eSa iw.kZr;k ets esa gwWaA flQZ ubZ ukSdjh gksus dh otg ls le; de feyrk gS rFkk bl le; NqV~Vh ysuk Hkh mfpr ugha yxrk gSA vr% vki eq>s u vkus ds fy, {kek djsA

eEehth dh rch;r iw.kZr;k Bhd gksxh mUgs esjk pj.k Li"KZ dgukA

vkxs lkekpkj ;g gS fd eSa tuojh var rd gj gkyr esa edku [kjhnwaxk ;k fdjk;s ij ywaxk ml le; eq>s Rs. 40000/- rd dk Payment djuk gSA Qksu ij esjk eryc vkils :i;s ekaxus dk ugha Fkk flQZ bruk gh dgk Fkk fd ;fn vki dqN :i;k bartke dj lds rks Bhd jgrk] D;ksafd ;gkWa ij C;kt nj T;knk jgrh gSA fdarq vki bl ckjs esa fcYdqy fpark fQdj u djs eSa ;gkWa ij bartke dj ywaxkA ;gkWa ij nks Vds dk C;kt yxrk gSA tcfd jktLFkku esa lok ;k Ms<+ Vds ij fey tkrk gS [kSjA

vki vius LokLF; dk iwjk [;ky j[kukA esjs ;ksX; lsok dk;Z fy[kukA

"ks"k loZ dq"kyA

vkidk iq=

v"kkSD

11. We have perused the statements of all the prosecution witnesses, so also, the above two letters relied upon by the prosecution for the allegation of demand of dowry. In our opinion, there is no substance upon the allegation of demand of dowry on the basis of letters Ex. P/4 and P/5 because the language of both the letters loudly speaks that no specific demand of dowry was made by the respondent. The letters are simple in language, so also such request can be made by the son-in-law to his father-in-law. Therefore, obviously, no FIR was filed by the in-laws soon after the occurrence and they participated in the cremation and no objection was raised by them which is evident from the fact that FIR was registered on the basis of report submit by the SDM, Jodhpur on 5.1.1990 for the incident took place on 13.6.1989.

12. In our opinion, the learned trial court has rightly arrived at with the finding that the prosecution has failed to prove its case beyond reasonable doubt because no material or any reliable evidence is available on record to prove the allegation of demand of dowry an murder is available on record. Therefore, the finding of acquittal given by the learned trial court cannot be termed as illegal or perverse or contrary to law.

13. As per the settled principle of law to convict a person for serious offence of murder the prosecution is required to produce its case by leading trustworthy evidence, but in this

case, neither FIR was filed by the in-laws nor any objections were raised by the parents, so also, post mortem was conducted in front of them and inquiry was commenced upon the information given by the respondent himself but after six months upon report submit by SDO, Jodhpur the FIR was registered. Therefore, on the basis of entire evidence, we find that prosecution has miserably failed to prove its case beyond reasonable doubt. Therefore, the learned trial court rightly acquitted the respondent from the charges levelled against him.

14. In view of the above, there is no force in this appeal and the same is hereby dismissed.