HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Criminal Appeal No. 350/1996

State Of Rajasthan

----Appellant

Versus

1. Narsi Ram
2. Naresh Kumar

Both sons of Shri Jagan Nath, by caste Brahmin, resident of Dantor, P.S. Pungal District Bikaner.

----Respondents

For Appellant(s)	:	Mr.C.S.Ojha, Public Prosecutor Mr.Pritam Solanki and Mr.K.L.Vishnoi, for the complainant
For Respondent(s)	:	Ms.Apeksha Chhangani, Adv

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Judgment

Judgment Reserved on : 28.08.2024

Judgment Pronounced on : 04.09.2024

[Per Hon'ble Mr. Justice Munnuri Laxman] :

1) The challenge in the present appeal is to the judgment of acquittal dated 27.04.1989 passed by the learned Sessions Judge, Bikaner on the file of Sessions Case No.3/1987, wherein and whereby the respondents-accused were acquitted of the charges under Section 498-A and 302 of IPC.

2) The sum and substance of the prosecution case is that the accused-Narsiram and the deceased-Krishna @ Sushila were married about 8-9 years prior to the occurrence. Another accused-

Naresh Kumar is brother of the husband of the deceased. At the time of marriage, a dowry of Rs.30,000/- to 35,000/- was given. The accused were harassing the deceased demanding additional dowry and she was drove out of matrimonial home. A Panchayat was convened in the presence of elders. On the advice of elders, the deceased was sent back to her matrimonial home. The incident occurred on 03.09.1986 at the house of the accused in the day light. The accused allegedly harassing the deceased physically 2-3 days prior to the incident asking her to meet the additional demand of Rs.10,000/-. When she expressed her inability to bring such amount from her parents, the accused allegedly burned the deceased and she went unconscious. When she regained consciousness, she found to be admitted in the P.B.M. Government Hospital, Bikaner.

3) Initially, the A.S.I of the concerned Police Station had recorded the statement of the deceased on the day of incident under Exhibit-P/5. On 19.09.1986 at about 7:15 p.m., a report was lodged with the Police Station Pugal, Distt. Bikaner complaining about the harassment and burning of the deceased by the accused. Basing on the above report, an FIR No.78/1986 was issued under Section 307 of IPC. The deceased died on 24.09.1986. After the death of the deceased the section of the offence was altered from Section 307 of IPC to Sections 498-A and 302 of IPC.

4) After hearing the prosecution and the accused, the charges were framed for the offence under Section 498-A and 302 of IPC against the respondents-accused. The accused denied the

charges and the trial went on. The prosecution in support of its case examined in all 18 witnesses and adduced documents under Exhibit-P/1 to Exhibit-P/27. Accused were examined under Section 313 Cr.P.C. with regard to incriminating evidence. They denied such evidence but did not adduce any oral evidence in their defence. However, they exhibited documents under Exhibit-D/1 to D/4.

5) The learned trial court after hearing the arguments of the prosecution and the accused found that no offences were made out against the accused. Consequently, the accused were acquitted of the charges under Sections 498-A and 302 of IPC. Hence, the present appeal at the instance of the State.

6) The learned Public Prosecutor appearing for the State and learned counsel appearing for the informant contended that the trial court has not properly appreciated the evidence of PW-1 & 2 and the dying declaration recorded by PW-12 Kamal Kumar Bagdi, the Judicial Magistrte, under Exhibit-P/10. According to him, going by the evidence of PW-1 & 2 and the dying declaration, they clinchingly establish that it is the accused who have subjected the deceased to harassment for bringing the additional dowry and when she expressed her inability, she was burned by them. It is contended that the learned trial court has given more weightage to the previous dying declaration under Exhibit-P/5 in spite of the reasons for making such a dying declaration has been clearly stated by the deceased in Exhibit-P/10. As per Exhibit-P/10, the deceased gave such a statement before the A.S.I. under Exhibit-P/5 on account of threat given to her by her husband stating that if

she involved them in the alleged incident, he would shoot her children as well as her brother. In these circumstances, such statement was made to A.S.I. under Exhibit-P/5. When such is the explanation given by the deceasxed, the learned trial court ought not to have given the weightage to the above dying declaration made to Police Officer and dying declaration Exhibit-P/5 should be discarded. There is ample evidence which clinchingly established the role of the respondents-accused for the offences charged. Therefore, they prayed to allow the appeal.

7) The learned counsel appearing for the respondents-accused has contended that earlier, statement was recorded on 03.09.1986, the day on which the incident occurred. The Police Officers were satisfied with the statement of the deceased under Exhibit-P/5, wherein she has categorically stated that she caught fire accidentally when she was cooking the food and she received burn injuries on account of such accidental fire. The accused having seen the fire, they tried to put out the fire and they shifted her to hospital for treatment. By virtue of such statement, the police found that it was the case of accidental fire and not homicidal burn injuries.

8) The learned counsel for the respondents-accused also contended that if really the accused allegedly inflicted the burn injuries to the deceased, the relatives of the deceased could have lodged a report immediately after 03.09.1986. They could not have waited upto 19.09.1986. By efflux of time and on account of deteriorating the health condition of the deceased, a new story was concocted by the victim and her family members to involve

the accused. According to him, if really accused intended to kill the deceased, they could not have shifted the deceased to hospital for her treatment. It is also contended that PW-1 & 2 have stated that on their enquiry, the deceased informed that accused inflicted the burn injuries and when such information if really given by the deceased, they could not have waited till the health condition of the deceased was deteriorated. They could have lodged report immediately after the incident inspite of making statement before the Police Officer. The belated report is result of creation and the appellants have nothing to do with the alleged incident.

9) The learned counsel for the respondents-accused also contended that there were no clear cut incidents of harassment. A vague and bald statement of harassment and maltreatment of the deceased was made. In fact, in the earlier statement and even in her subsequent statement, the deceased never stated a past history of ill-treatment from the hands of the accused. However, PW-1 & 2 stated that there was continuous harassment and in fact, they conducted Panchayat before elders but they did not name the elders. No efforts were made to examine such person. In fact, the neighbours were examined and they did not support the claim set up by PW-1 & 2 with regard to harassment so as to attract the offence under Section 498-A of IPC.

10) We have heard the learned counsel for the parties and carefully perused the record of the case.

11) The present appeal is against the acquittal. There is no doubt that the appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of

acquittal is based. The appellate court does not interfere in the findings of the acquittal if the judgment of acquittal is reasonable or result of plausible view on the basis of evidence and materials on record. The appellate court only interfere in a case of findings which are perverse or shock the conscious of the higher court. If the view taken by the trial court is also possible from the evidence on record merely because other view is possible, the appellate court in the said circumstances cannot justify interference with the acquittal.

12) The parameters of consideration of appeal has been succinctly stated by the Apex Court in the case of **Chandrappa & Ors. Vs. State of Karnataka,** reported in (2007) 4 SCC 415. Para 42 of the judgment reads as follows:-

> "42. …….(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
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> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
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> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, Secondly, the accused having secured his acquittal, the presumption of his

> innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

13) The appeal has to be decided in the parameters laid down by the Apex Court in the above cited judgment. The entire case of the prosecution rest upon two dying declarations. The first dying declaration was made on 03.09.1986 to the Police Officer under Exhibit-P/5. The second dying declaration was recorded on 19.09.1986 and on the same day, Exhibit-P/1 was lodged with the police basing on which the FIR was issued for the offence under Section 307 of IPC. In the first dying declaration Exhibit-P/5, the deceased categorically stated that burn injuries were received accidentally. In fact, the accused had shifted the deceased to PBM Government Hospital, Bikaner and the information was given to the parents of the deceased by the husband of the deceased on the same day when the deceased was being shifted to Government Hospital, Bikaner. This means the parents of the deceased must have reached the hospital either on the same day or on the next day. Till 19.09.1986, there were no complaint from the parents of the deceased alleging any role of the accused in causing the burn injuries. There is no explanation coming from the informant as to why there was such an inordinate delay in lodging the report. There is a time gap of 16 days in between the first dying declaration and the second dying declaration.

14) The authenticity of first dying declaration is not disputed. The same can be found affirmation in the second dying

declaration. However, in the second dying declaration, it is stated by the deceased that accused have inflicted injuries when she refused to comply the additional demand of Rs.10,000/- from her husband. She claimed to have received injuries on hand. However, the doctor (PW-10 Dr.Shyam Sundar), who examined the deceased before the death while she was under treatment, did not support the presence of any such injury on the hand of the deceased except burn injuries. In the previous statement also, she did not speak about receipt of any such injury to the hand.

15) The relatives of the deceased reached the hospital either on the same day or the next day since the information about the incident was passed on to them on the date of incident itself. There is a time gap of 16 days in between the first dying declaration and second dying declaration. If really there was a role of the respondents-accused in commission of the offence, the parents of the deceased after knowing the incident from the deceased, definitely would have lodged a report immediately and they would not have waited till 19.09.1986. The relatives of the deceased were with them for all that 16 days and there is scope of influence and tutoring the deceased. The explanation given by the deceased for making the first dying declaration was that her husband allegedly threatened the deceased to shoot her children and brother. It is not known when such a threatening was given. If really such a threat was initially given, when her parents reached to her, she could have immediately informed them about such threatening and acts of the accused. She could not have waited upto 19.09.1986. These are the circumstances, which leave great

doubt on the version of the deceased in the second dying declaration. The reasons given by the learned court below for disbelieving the second dying declaration is plausible and convincing in the light of the evidence on record.

16) Further, PW-1 & 2 have stated that there was persistent harassment of the deceased by the accused demanding additional dowry. They also claimed that a Panchayat was also held before the elders. There is no detail of harassment and the names of the elders were not given nor they have been examined in court. In fact, the neighbours of the deceased were examined, who in their statement stated that there were no harassment.

17) Further, in the initial statement and in the subsequent statement of the deceased, there is no whisper that there is persistent harassment demanding additional dowry. The only incriminating found in the second dying declaration is that 2-3 days prior to the incident there has been physical assault and she received an injury on hand. This claim was not accepted by the trial court considering the medical evidence available on record. The medical evidence do not support the receipt of any such injury on the hand. If this evidence is discarded, absolutely there is no convincing material to prove the ingredients of offence under Section 498-A of IPC.

18) As per the decision of the Apex Court in the case of **Chandrappa** (cited supra), when there is a plausible view from the judgment of acquittal which is based on the evidence available on record, merely because the other view is possible, the appellant court cannot interfere such a finding of acquittal. As

stated above, we find that plausible and reasonable view was taken by the trial court in acquitting the respondents-accused for the offences charged basing on the evidence available on record. We find no perversity in the judgment of the trial court acquitting the respondents.

19) Consequently, the criminal appeal being devoid of merit is hereby dismissed.

(MUNNURI LAXMAN),J **(DR. PUSHPENDRA SINGH BHATI),J.**

NK/-