

Saleem Khan vs The State Of Madhya Pradesh on 29 January, 2020

Bench: Ashok Bhushan, Navin Sinha

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1975 OF 2010

SALEEM KHAN & ANR.

Appellants

VERSUS

STATE OF MADHYA PRADESH

Respondent

O R D E R

This appeal has been filed against the judgment and order dated 21.07.2009 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.1139 of 1995.

The appellants along with co-accused Raeesha Khatoon alias Raeesa Begum were tried for the offences punishable under Sections 302/34 and 498/34 IPC. All the accused were convicted for the offence punishable under Section 302 read with Section 34 IPC and sentenced to suffer life imprisonment.

The prosecution case as noticed by the Trial Court in brief is as under:

“On 22.11.93 at 3.45 am accused Salimkhan registered a report in police station Repura that his marriage was solemnized with Sajjo alias Shahnaz 5-6 months ago. Today night between 10-11 o'clock Shahnaz was Date: 2020.01.31 17:10:47 IST Reason:

sleeping alongwith all members of the family in the middle room and he was sleeping in the outer room. Around 4.00 a.m. his mother woke him up and told that the daughter in law has put on the chitkani from the inside in the kitchen and put herself on fire. On telling by the mother he went into the kitchen, the chitkani of the door was closed from inside and from inside the smell was coming. Then he woke up his

brother Nasim and sent him in from the latrine way outside the house and after reaching inside he opened the chitkani. After opening the chitkani we all saw that his wife Shahnaz was burning and crying. After leaving his family members there, he has come alongwith brother to give information. On the basis of the report of accused Salimkhan in police station Repura at GD number 558 the information was registered which is Exhibit P-20C. After registering the information SHO RS Sengar alongwith staff departed for the place of incident, the departure memo was marked Exhibit P-20. After reaching the place of incident Shri Sengar found Sajjo in the kitchen of the house in naked position burnt. For taking her dying declaration, tehrrir Exhibit P-21 was got written and through the constable sent to Nain Tehsildar, Repura but Naib Tehsildar was not present in the headquarter.” After the deceased Sajjo alias Shahnaz was burnt in the house, she was taken to the Primary Health Centre, Raipura. Dr. Ranjit Singh, Assistant Surgical Medical Offier, Primary Health Centre was requested in writing (Ex. P/6) by a police officer to record the statement of the victim, which was recorded by Dr. Ranjit Singh, who was examined by the prosecution as PW5.

In order to prove its case, the prosecution examined 14 witnesses and in defence, the accused examined three witnesses.

After considering the entire evidence on record, the Trial Court found the charges under Section 302 read with Section 34 IPC proved against both the appellants and co- accused Raeesa Khatoon @ Raeesa Begum (since deceased), and sentenced them to undergo life imprisonment with fine of Rs.2000/- each.

In appeal, the High Court had also gone through the entire evidence including oral evidence on record and held that the dying declaration Ex.P/1 of the deceased was reliable piece of evidence. The appeal was dismissed by the High Court by its judgment and order dated 21.07.2009, which is under challenge before us.

Learned counsel for the appellants submitted that the Courts below have committed error in relying upon the dying declaration. He submitted that at the time of recording of the dying declaration, two or three ladiesn were also present and some of the questions which were put to the victim were answered by those ladies, which fact has also been stated by PW5 Dr. Ranjit Singh in his deposition. Therefore, the recording of dying declaration is vitiated. Learned counsel further submitted that appellant no.2 is a lady and both the appellants have now been in custody for about 9 and 7 years respectively. Hence, the appellants were entitled to be acquitted.

On the other hand, learned counsel for the State submitted that the prosecution has proved its case beyond reasonable doubt and, therefore, the appeal deserves dismissal.

We have considered the submissions of the learned counsel for the appellant as well as for the State and have perused the oral evidence as well as other evidence on record. We have also perused the dying declaration Ex.P/1 dated 22.11.1993 recorded by PW5 Dr. Ranjit Singh.

Before recording the dying declaration Ex.P/1, Dr. Ranjit Singh had certified that Sajjobai @ Shahjahan wife of Salim Khan was conscious and responding well to the questions and she was fit to give her statement.

As regards the submission of the appellants that at the time of recording of the dying declaration two or three ladies were present, we have looked into the evidence of PW5 Dr. Ranjit Singh. PW5 in his evidence has stated that there were two or three ladies present at the time of recording of the dying declaration. The Nurse gave water to her to drink once or twice and some lady also gave water to Sajjobai. There is no evidence on record to show that the ladies present at the time of recording of the dying declaration were in any manner prompting the deceased to give answers. The submission of the learned counsel for the appellants that some of the questions were answered by the ladies present also does not appear to be correct.

Reference has been made to paragraph 18 of the statement of PW5, which is to the following effect: "18. It is incorrect to say that while writing dying declaration statement the answer of the questions given by Sajjobai before, some lady used to take her mouth near her ear. The witness says himself that whatever question used to be asked from Sajjobai, she herself used to give answer directly. The witness also says that once where her answer was not clear, was not understood, then the persons standing nearby her and those who had heard her answer, said that this is being told by her." From the above statement, it is not correct to say that anyone of the ladies present gave any answer. What PW5 Dr. Ranjit Singh stated in his statement is that once the answer of the victim was not clear and was not understood then the persons standing nearby who had heard the answer stated what was being told by her. The submission does not indicate that the answers to the questions put by Dr. Ranjit Singh were given by any of the ladies present there. Answer with regard to one question, which was given by the deceased and was heard by every person present there but was not clear to the Doctor, was clarified and accepted by the Doctor, who recorded the statement. It cannot be said that the recording of dying declaration, in any manner, was vitiated.

Learned counsel for the State has also contended that the statement of the deceased which was recorded by the police when she was brought at the Primary Health Centre contains the same allegations which have come in the dying declaration of the deceased and both the Courts below have rightly placed reliance on the dying declaration of the deceased. Both the Courts below have gone through the evidence on record and have not committed any error in recording the conviction and sentence of the appellants.

We thus do not find any merit in the appeal. As regards the submission of the appellants that the appellant no.2 is a woman and they have put in 9 and 7 years in custody respectively, we only observe that the applications for grant of remission can be made by them only after completing requisite period of the imprisonment, as per the applicable guidelines. It shall be open to them to present an appropriate application, after undergoing requisite period of sentence, with the appropriate authority which shall consider the application on merits in accordance with law. The appeal is, accordingly, dismissed.

.....J. [ASHOK BHUSHAN]J. [NAVIN SINHA]
NEW DELHI;

JANUARY 29, 2020

ITEM NO.16

COURT NO.8

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.1975/2010

SALEEM KHAN & ANR.

Appellant(s)

VERSUS

STATE OF MADHYA PRADESH

Respondent(s)

Date : 29-01-2020 This appeal was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN HON'BLE MR. JUSTICE NAVIN SINHA For Appellant(s) Mr. Umang Shankar, AOR For Respondent(s) Ms. Pragti Neekhara, Addl. AG Mr. Harsh Parashar, AOR Mrs. Swarupama Chaturvedi, AOR UPON hearing the counsel the Court made the following O R D E R The appeal is dismissed, in terms of the Signed Order. Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(RENU KAPOOR)
BRANCH OFFICER

(Signed Order is placed on the File)