

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 277/1996

1. Smt. Sayari W/o Shri Malaram, aged 65 years,
 2. Smt. Moti Bai Widow of Shri Purkharam, aged 70 years
(Expired)
 3. Kanaram S/o Shri Malaram (Expired)
- All by caste Sirvi, R/o Atvada, P.S. Sojat, District Pali

----Appellant

Versus

State Of Rajasthan

----Respondent

For Appellant(s) : Mr. Suresh Kumbhat, through VC
For Respondent(s) : Mr. B.R. Bishnoi, PP

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

JUDGMENT

DATE OF JUDGMENT

20/01/2022

BY THE COURT:

The instant Criminal Appeal has been preferred by appellants Smt. Sayari, Moti Bai and Kanaram under Section 374 (2) Cr.P.C. being aggrieved of the impugned judgment dated 17.04.1996 passed by the learned Additional Sessions Judge, Sojat in Sessions Case No.216/1992 whereby, all three accused-appellants were convicted and sentenced as under:-

Accused-appellant	Offence	Sentences	Fine and default
1. Sayari} 2.Moti Bai}	498A IPC	2 Years RI	Rs.1,000/- and in default to further undergo 3 moths RI
	498A IPC	2 Years RI	Rs.1,000/- and

3. Kana Ram			in default to further undergo 3 moths RI
	302 IPC	Life Imprisonment	Rs.5,000/- and in default to further undergo 2 moths RI

All the sentences were ordered to run concurrently.

In nutshell, facts relevant and essential for disposal of the criminal appeal are noted hereinbelow:-

Complainant Jairam (P.W.19) submitted a written report (Ex.P/8) to the SHO, Police Station Sojat, District Pali on 28.02.1992 at 12:15 p.m. alleging inter alia that in the morning, one Budharam Sirvi, resident of Village Atabada, visited his house and informed his elder brother Pemaram that his daughter Indra (Pemaram's daughter) was not well so they had to visit her at her house. On this, all the family members went to Indra's house, where they saw that dead body of Indra was lying on the floor and blood stains were found on her mouth. They asked to Kanaram on which, he feigned ignorance by saying that on previous night, he was at his aunt's house and when he returned back in the morning he saw that Indra was hanging by a noose.

On the basis of this report, FIR No.50/1992(Ex.P/36) came to be registered at the Police Station Sojat, District Pali for the offences under Sections 498A and 304B IPC and investigation was commenced.

The usual investigation was undertaken. The dead body of Indra was subjected to postmortem by a Medical Jurist at Government Hospital, Sojat, which issued a postmortem report

(Ex.P/18) wherein, cause of death was opined to be asphyxia due to strangulation.

The accused-appellants were arrested vide Memos Ex.P/13, Ex.P/14 and Ex.P/37 and weapon of offence i.e. knife vide Memo Ex.P/15 and their own blood stained clothes vide Memo Ex.P/34 were recovered by the Investigating Officer during investigation. Ultimately, after completing the investigation, a charge sheet came to be filed against the accused-appellants Sayari and Moti Bai for the offence under Section 498A and against accused Kanaram for the offence under Sections 498A and 302 IPC in the court concerned.

As the offence under Section 302 IPC was exclusively triable by the Court of Sessions the case was committed to the Court of Sessions Judge, Pali, from where, it was transferred to the Court of Additional Sessions Judge, Sojat for trial where charges were framed against the accused-appellants for the above offences. They pleaded not guilty and claimed trial. The prosecution examined as many as 31 witnesses and exhibited 38 documents to prove its case. The accused-appellants were questioned under Section 313 CrPC and upon being confronted with the circumstances appearing against them in the prosecution evidence, they denied the same and claimed to be innocent. However, no oral evidence was led in defence. At the conclusion of the trial, after hearing the arguments advanced by the prosecution and the defence counsel and upon appreciating the evidence available on record, the learned trial court proceeded to convict and sentence the accused-appellants as above. Hence, this appeal.

Learned counsel for the appellants at the outset, stated that so far as appellants No.2 and 3 Smt. Moti Bai and Kana Ram are concerned, they expired during pendency of the appeal and hence the appeal stood abated to their extent vide orders dated 19.08.2020 and 03.09.2020.

As per order of this Court dated 03.01.2022, the verification report regarding appellant Sayari, submitted by the SHO, Sojat City, District Pali, is taken on record.

Learned counsel for the appellants does not challenge the conviction of the appellant-Sayari as recorded by the learned Additional Sessions Judge, Sojat. He further submits that appellant-Sayari has already attained the age of 82 years and the sentences awarded to her be reduced to the one already undergone by her by taking a sympathetic and lenient view. He submitted that out of the total sentence awarded, appellant Sayari has already undergone around two and half months of sentence and she was released on bail by order of this Court on 19.05.1992. Learned counsel for the appellant also submitted that looking to the Covid Pandemic, if the appellant is now directed to serve the remaining sentences, there would be danger to the life of the appellant as she is in the eve of her life and would be put at risk of life threatening infection, if sent to the prison at this age.

Learned Public Prosecutor vehemently and fervently opposed the submissions advanced by the appellants counsel.

We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the impugned judgment.

Taking into consideration the overall facts and circumstances of the case we are of the view that as appellant Sayari has already attained the age of 82 years, the sentences awarded to her be reduced to the period already undergone by her which is nearly two and half months.

The appeal thus deserves to be and is hereby accepted in part. While affirming conviction of the appellant-Sayari for the offence under Section 498A IPC as recorded by the trial court by the impugned judgment dated 17.04.1996 passed by the learned Additional Sessions Judge, Sojat, Pali, the sentence awarded to the appellant is reduced to the period already undergone by her. The appellant is on bail. She need not surrender, if not required in any other case. Her bail bonds are discharged.

The appeal is partly allowed in these terms.

However, keeping in view the provisions of Section 437-A Cr.P.C., the appellant is directed to furnish a personal bond in the sum of Rs.40,000/- and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the present judgment on receipt of notice thereof, the appellants shall appear before the Supreme Court.

Record be sent back forthwith.

(VINOD KUMAR BHARWANI),J

(SANDEEP MEHTA),J