

(2021) 10 RAJ CK 0047

In the Rajasthan High Court

Case No : S.B. Criminal Leave To Appeal No. 140 Of 2019

Barkat S/o Sh. Aadam Khan

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 20-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 313, 378(4)
Indian Penal Code, 1860 — Section 34, 427, 447

Citation : (2021) 10 RAJ CK 0047

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : Dinesh Godara

Final Decision : Dismissed

Judgement

Manoj Kumar Garg, J

The appellant complainant has filed the present Criminal Leave to Appeal under Section 378(4) Cr.P.C against the judgment dated 15.03.2019 passed by learned Judge, Gram Nyayalaya Sankda Headquarter, Pokaran, District Jaisalmer in Criminal Case No. 74/2016 whereby the accused respondents No. 2 to 4 have been acquitted from the offences under Section 447, 427 r/w 34 IPC.

Brief facts of the case are that the appellant complainant filed a complaint before the learned Magistrate which was sent for registration of FIR under Section 156(3) Cr.P.C. As per allegation in the complaint, land of father of appellant is located in Khasra NO. 14 & 15 measuring 16.02 bigha in village Nathusar. It is alleged that on 06.06.2016 when the appellant was in Pokaran, the accused respondents came to his land armed with weapons and started abusing the family members of the complainant. It is alleged that the respondents uprooted the stone slabs and took them in the vehicle and thus caused financial loss of Rs. 1500/- On this report a FIR No. 93/2016 was registered against the respondents for offence under Sections 447, 427 read with 34 IPC and investigation

commenced. After investigation, challan was presented against the respondents No.2 to 4.

The trial Court framed charge against the accused respondents for offence under Sections 447, 427 & 34 IPC. The accused respondents denied the charge and claimed to be tried.

The prosecution in support of its case recorded statements of nine witnesses and exhibited documents. The statement of accused respondents under Section 313 Cr.P.C. was recorded but did not produce any evidence in defence. After hearing arguments of both the sides, the trial Court acquitted the accused respondents for the offences charged giving them benefit of doubt.

The learned counsel for the appellant argued that the Court below without going through the entire record and evidence wrongly acquitted the accused respondents for the offence charged against them. The court below while passing the impugned order did not consider the statements of witnesses in correct perspective. It is argued that there were direct evidence as well as circumstantial evidence which proved the guilt of the accused respondents. Thus the judgment of the Court below is liable to be set aside and the accused respondents should be convicted for the offence charged against him.

I have heard the counsels for the parties and gone through the entire record.

Section 447 & 427 IPC reads as under :-

"447. Punishment for criminal trespass.-Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both."

"427. Mischief causing damage to the amount of fifty rupees.-Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

From the evidence on record so also finding arrived by the learned trial court, it appears that the learned trial court has acquitted the accused respondents on the basis of material contradictions in the statement of the independent witnesses so also civil dispute going on between the parties. The learned Trial court came to the conclusion that the prosecution has failed to prove that the place from where the stone slabs were uprooted and broken belonged to the complainant party. The trial court also found that the incident was alleged to have happened on 06.06.2016 but the complaint was lodged on 20.06.2016. No plausible explanation has been given with regard to delay in lodging the complaint. Thus, the prosecution failed to prove offences under Section 447 & 427 IPC against the accused respondents beyond reasonable doubt. In the opinion of this Court, the findings given by the trial Court are perfectly justified and there is no illegality in the judgment of

acquittal by the trial Court.

In the case of 'Mrinal Das & others v. The State of Tripura, : 2011(9) SCC 479,' decided on September 5, 2011, the Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

Similarly, in the case of State of Rajasthan v. Shera Ram alias Vishnu Dutta, reported (2012) 1 SCC 602,' the Hon'ble Supreme Court has observed as under:--

"A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal."

There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion is that there is no substantial difference between an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the trial Court is a reasonable one and the conclusion reached by it had grounds well set out on the materials on record, the acquittal may not be interfered with. Learned counsel for the appellant has failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

In the facts and circumstances of the case, the petition seeking a leave to appeal has no substance and the same is hereby dismissed.

The record of the trial court be sent back forthwith.