

(2011) 02 SC CK 0135
In the Supreme Court Of India
Case No : Criminal Appeal No"s. 6-8 of 2004

C. Perumal	Vs	APPELLANT
Rajasekaran and Others		RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 302, 34, 376(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2012) 2 ALD(Cri) 624 : (2012) CriLJ 3461 : (2012) 4 RCR(Criminal) 942

Hon'ble Judges : Harjit Singh Bedi, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : K. Sarada Devi, for the Appellant; A.T.M. Sampath, for the Respondent

Final Decision : Dismissed

Judgement

1. This is rather an unfortunate case. There were five accused in all who were sentenced by the trial court for offences punishable under Sections 376(2)(g), 201 of the Indian Penal Code as well as Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The allegation was that the five accused, and A1 in particular, who was the main accused and involved with the deceased in a clandestine relationship, had raped her on the night intervening the 28 and 29th of January, 1999. The trial court in its judgment dated 31st August, 2000 held the case against the accused to be proved and they were, accordingly, sentenced to death u/s 302 or Section 302/34 of the Indian Penal Code and to various terms of imprisonment under the various other sections under which they had been charged. An appeal was thereafter taken by the accused to the High Court and a reference was also made for the confirmation of the death sentence. The High Court has by its impugned judgment declined the reference and at the same time allowed the appeal of the

accused acquitting them in toto.

2. The present appeals have been filed at the instance of the complainant who is the father of the deceased. We see from the record that A1 was the main accused. As per the death certificate which has been put on record, he has passed away on the 30th June, 2009. The appeal qua him is, accordingly, abated. We have, accordingly, examined the evidence with respect to A2 to A5.

3. We have gone through the evidence very carefully keeping in view the gravity of the offence. We, however, find that there is no evidence with respect to the involvement of A2 to A5. The High Court has taken cognizance of the fact and observed that certain items had been recovered at the instance of A2 and A4 and they were a haystack, a nylon wire and a plastic wire which were not required to commit the murder. We see that all these items are of common use and have not been connected with the incident. The learned Counsel for the Appellant has, however, argued that the evidence of P.W. 3 would show that accused A2 to A5 had also been seen with the deceased and A1 moving around together. We have carefully perused the statement of this witness and find a serious flaw therein inasmuch that in his statement recorded u/s 161, Code of Criminal Procedure this fact had not been mentioned by him and on the contrary the evidence suggests that all the five accused and the deceased had been seen together two days earlier to the incident. The High Court was, therefore, to our mind, justified in holding that the time lag made it difficult to connect A2 to A5 with the incident. We also put to the learned Counsel for the Appellant if there was any other evidence with respect to the involvement of the accused. She candidly admitted that there was none. We thus find no merit in these appeals which are, accordingly, dismissed.