

(2014) 05 RAJ CK 0083

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 82/2010 and Criminal Appeal No. 153/2014

Kumari Alka and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313 — Penal Code, 1860 (IPC) - Section 376, 450

Citation : (2014) 05 RAJ CK 0083

Hon'ble Judges : M.C. Sharma, J.

Bench : Single Bench

Advocate : B.S. Chhaba, for the Appellant; R.R. Baisla, P.P. and Madhav Mitra, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Sharma, J.—The aforesaid revision petition and cr. appeal have been filed against the judgment dated 25.8.2009 passed by Special Judge, Women Atrocities and dowry Cases, Jaipur City, Jaipur in Sessions Case No. 23/2008, whereby the accused respondent has been acquitted from the offence under Sections 450, 376 IPC, hence the arguments have been heard together and they are being decided by this common order.

2. Brief facts of the case are as under:

"On 6.12.2007, complainant petitioner along-with her father and mother appeared at Police Station, Galta Gate and submitted a report regarding committing rape with her by accused respondent Constable Shiv Prasad i.e. co-employee of her father. On the basis of the said report, FIR No. 359/2007 was registered at Police Station, Galta Gate, Jaipur for the offence under Sections 450 and 376 IPC. The investigation was started. After completion of investigation, the police submitted charge sheet against the accused respondent for the offence under Sections 450 and 376 IPC before the Judicial Magistrate No. 8, Jaipur City,

Jaipur. The court below committed the case to the Court of Special Judge, Women Atrocities and Dowry Cases, Jaipur City, Jaipur for trial. The trial court framed charges against the accused respondent for the offence under Sections 450 and 376 IPC, who denied for the same and claimed for trial. The prosecution produced its witnesses and got exhibited some documents. Thereafter the statement of the accused person were recorded under Section 313 Cr.P.C. After hearing both the sides, the learned trial court passed the judgment dated 25.8.2009 acquitting the accused respondent.

Against the aforesaid judgment of acquittal dated 25.8.2009 passed by the court(s) below, the revision petition No. 82/2010 has been preferred by the complainant, whereas appeal No. 153/2014 has been preferred by the State of Rajasthan."

3. Learned PP appearing for the State as also the counsel for the complainant-petitioner have contended that the trial court has failed to exercise the jurisdiction vested in it by law and only exercised the jurisdiction with material irregularity. The judgment of the trial court is also contrary to the facts on record and suffers from patent illegality and based on misreading of evidence, apparent on the face of it. They have further contended that the trial court has not appreciated the fact arising from the statement of the prosecution witnesses. They have further contended that the trial court has seriously erred in not appreciating the fact that in his statements the accused respondent and SHO Suresh Mehrania wrongly stated that the accused respondent submitted a report at Police Station, Galta Gate regarding conflict between him and father of the complainant petitioner, but he has not mentioned any reasons for not registering the case on the basis of the report of the accused respondent and he has not submitted a complaint before the higher authorities. They have further contended that the trial court has acquitted the accused respondent on the basis of the defence witnesses and wrongly acquitted the accused respondent. They have further contended that although they submitted the judgment (s) before the court below, but the same have not been considered by the trial court. Mr. R.R. Baisla, learned PP has placed on the same judgment, which has been cited by the trial court. They have further contended that no witness has been declared hostile and all the witnesses are naming the name of the accused respondent and it is the full proof case against him, hence the accused respondent be sent to jail after setting aside the judgment of trial court acquitting the accused respondent.

4. On the other hand, Mr. Madhav Mitra, learned counsel for the accused respondent has contended that the trial court has rightly appreciated the evidence submitted by the prosecution and after due appreciation of the evidence, the trial court has acquitted the accused respondent. He has further contended that there was a dispute in between the father of the prosecutrix and the accused respondent regarding duty chart and they belong to the same place. He has further contended that there was a delay in lodging the fir. He has further

contended that accused respondent has sustained 5 injuries and the prosecution has failed to explain the injuries of the accused respondent. He has drawn the attention of this Court on the relevant part of the judgment of the court below, which is reproduced as under:

5. He has further contended that there are contradictions in the statement of the prosecution witnesses and there are improvements and omissions also in the statement of the prosecution witnesses. He has further contended that the trial court, after considering all the facts and circumstances of the case and after due appreciation, has acquitted the accused respondent.

6. The court's attention was also drawn on the following judgment of the Hon'ble Supreme Court:-

" Umrao Vs. State of Haryana and Others, in which the Lordships of the Supreme Court has observed in para 26 that "it is now well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below."

7. Looking to the evidence just discussed above, it can easily be said that the prosecution has not been able to prove its case against the accused respondent and the learned Court below was right in acquitting the accused respondent for the alleged offence. I have no reason to dissent from the finding of acquittal recorded by the learned Court(s) below as the same appears to be reasonable and plausible in the facts and circumstances of the case.

8. It may be stated that in appeal against acquittal though powers of the High Court to reassess the evidence and to reach its own conclusions are as extensive as in an appeal against an order of conviction, yet as a rule of prudence, it should always give proper weightage and consideration to the views of the trial judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, right of the accused to the benefit of any doubt and thus, High Court should not ordinarily disturb the order of acquittal.

9. Having heard the learned counsel for the parties and gone through the impugned judgment passed by the learned court below, I find that the learned court below has given cogent reasons for not finding the case of the prosecution proved against the accused respondent/s. I am in agreement with the judgment dated 25th August, 2009 passed by the court below, the relevant part of which is reproduced as under:

10. Therefore, I do not want to interfere with the impugned judgment(s) passed by the learned court(s) below and the revision petition filed by the complainant as also the appeal filed by the State being bereft of any substance of any merit deserve to be dismissed.

11. Accordingly, the revision petition filed by the complainant and appeal filed by the State fail and the same are hereby dismissed, after confirming the judgment of the court below acquitting the accused respondent.