

(2015) 07 RAJ CK 0148

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 184/2014 and Cr. Appeal No. 667 of 2014

State of Rajasthan and Others

APPELLANT

Vs

Ghewar Ram and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 323
Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 292, 302, 304B, 392, 449

Citation : (2015) 07 RAJ CK 0148

Hon'ble Judges : Gopal Krishan Vyas, J;Vijay Bishnoi, J

Bench : Division Bench

Advocate : J.P.S. Choudhary, Public Prosecutor and D.S. Udawat, for the Appellant; Shambhoo Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J—The above cr. leave to appeal and the cr. appeal filed by the State of Rajasthan and the complainant are arising out from the judgment dated 9.7.2014 passed by the learned District & Sessions Judge, Pali in Sessions Case No. 122/2011 by which the learned trial court acquitted the respondent from the charges levelled against him under Section 449, 302 and 392 IPC.

2. As per brief facts of the case on 12.4.2011 at about 10.15 am the complainant PW-1 Manohar Lal submitted a written report in the Industrial Area Police Station, Pali in which it is alleged that in his factory M/s. S. Nitin Engineering Works/Factor situated at G-31 Industrial Area, Pali one Chhoga Ram S/o. Kalu Raika was serving as Chowkidar. Sh. Chhoga Ram came on duty in the night of 11.4.2011 at about 8.00 pm and other labours went out from factory premises after completion of work time, but Chhoga Ram remained there. The complainant stated that today in the morning at about 8.15 am his employee Vikarm Singh informed him on telephone that Chhoga Ram has received injuries and his body

is lying in an open place of the factory premises and, therefore, come there. Upon said information, the complainant went in the factory premises and saw that dead body of Chhoga Ram lying there. The complainant immediately called the police and made allegation that some unknown person has caused injuries by stone to Chhoa Ram and due to those injuries he died. Upon aforesaid allegation, the complainant prayed that investigation may be conducted and action may be taken against the culprits.

3. Upon aforesaid information, FIR No. 69/2011 was registered under Section 302 IPC and after usual investigation, the charge-sheet was filed against the respondent after his arrest upon circumstantial evidence under Section 449, 302 and 292 IPC. The challan was filed in the court of Judicial Magistrate No. 2, Pali and thereafter, the case was transferred to the court of Sessions Judge, Pali where trial was commenced.

4. In the trial, the charges were framed against the respondent for offence under Section 302, 392 and 449 IPC and after framing charges, the statements of 23 prosecution witnesses were recorded and, thereafter, the statement of respondent Ghewar Ram was recorded under Section 323 Cr.P.C. in which he said that no offence is committed by him. He has been implicated falsely.

5. The learned trial court after providing an opportunity to lead evidence in defence heard the matter finally and after hearing following questions were framed for adjudication:

6. The learned trial court acquitted the respondent from the charges levelled against him on the ground that there is no direct evidence and from the circumstantial evidence produced by the prosecution in the trial, the prosecution has failed to prove its case beyond reasonable doubt.

7. Learned Public Prosecutor and learned counsel appearing for the complainant submit that the judgment impugned dated 9.7.2012 passed by the trial court for acquittal is totally erroneous because it has been passed without application of mind, therefore, the finding of guilt given in judgment impugned is not sustainable in law.

8. As per argument the blood stained cloths were recovered from the iron box at the instance of the respondent in his presence, in spite of that, the trial court erroneously acquitted the respondent, therefore, the finding of acquittal deserves to be quashed. Learned Public Prosecutor and learned counsel for the complainant submit that by leading trustworthy evidence the prosecution has established that ear rings (Gokhru) worn by the deceased was also recovered at the instance of the respondent, therefore, there was motive left with the respondent to commit murder, but the learned trial court without appreciating the prosecution evidence in right perspective committed a grave error of law so as to acquit the respondent from the charges levelled against him.

9. Learned Public Prosecutor and learned counsel for the complainant vehemently

argued that it is a case in which although there is no direct evidence but as per the circumstantial evidence it is a fit case in which the respondent is required to be punished for committing offence under Section 302 and 392 IPC.

10. Lastly it is argued that prosecution has clearly proved the fact that all the injuries were sustained to the deceased were sufficient to cause death but the learned trial court ignored the material evidence of PW-17 Anand Prakash, PW-9 Ratna Ram and PW-19 Adam Khan by which prosecution has clearly established the motive of the respondent for committing alleged offence, therefore, cr. leave to appeal and criminal appeal may kindly be allowed and respondent may be convicted.

11. After hearing the learned Public Prosecutor and learned counsel for the complainant and perusing the entire evidence it emerges from the facts that there is no direct evidence to connect the respondent with the crime. The learned trial court considered the evidence of Investigating Officer PW-22 Rajeev Parihar, PW-9 Ratna Ram, PW-23 Jana Ram and gave finding that upon perusal of the statements of these witnesses the prosecution has failed to produce trustworthy evidence so as to complete the chain of evidence to convict the respondent. Further, in the findings given by the trial court it is categorically held that the evidence of identification is not trustworthy because prosecution has failed to prove its case beyond reasonable doubt. So also, the prosecution has failed to prove its case beyond reasonable doubt. The learned trial court relied upon the judgment of the Hon''ble Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 and held that if the case is based upon the circumstantial evidence then the prosecution is required to prove its case beyond reasonable doubt by leading evidence to complete the chain so as to held accused guilty for the offence. In our opinion no error is committed by the trial court because in the aforesaid case, the Hon''ble Supreme Court gave following verdict, which reads as under:-

"A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

12. The said judgment was further followed in the case of Sher Singh Vs. State of Haryana (Cr. Appeal No. 1592/2011), decided on 9.1.2015, in which the following adjudication is made by the Hon"ble Supreme Court, which reads as under:

"13. In Section 113A of the Evidence Act Parliament has, in the case of a wife's suicide, "presumed" the guilt of the husband and the members of his family. Significantly, in Section 113B which pointedly refers to dowry deaths, Parliament has again employed the word "presume". However, in substantially similar circumstances, in the event of a wife's unnatural death, Parliament has in Section 304B "deemed" the guilt of the husband and the members of his family. The Concise Oxford Dictionary defines the word "presume" as: supposed to be true, take for granted; whereas "deem" as: regard, consider; and whereas "show" as: point out and prove. The Black's Law Dictionary (5th Edition) defines the word "show" as - to make apparent or clear by the evidence, to prove; "deemed" as-to hold, consider, adjudge, believe, condemn, determine, construed as if true; "presume" as-to believe or accept on probable evidence; and "Presumption", in Black's, "is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted." The Concise Dictionary of Law, Oxford Paperbacks has this comprehensive yet succinct definition of burden of proof which is worthy of reproduction:

"Burden of Proof: The duty of a party to litigation to prove a fact or facts in issue. Generally the burden of proof falls upon the party who substantially asserts the truth of a particular fact (the prosecution or the Plaintiff). A distinction is drawn between the persuasive (or legal) burden, which is carried by the party who as a matter of law will lose the case if he fails to prove the fact in issue; and the evidential burden (burden of adducing evidence or burden of going forward), which is the duty of showing that there is sufficient evidence to raise an issue fit for the consideration of the trier of fact as to the existence or non-existence of a

fact in issue.

The normal rule is that a Defendant is presumed to be innocent until he is proved guilty; it is therefore the duty of the prosecution to prove its case by establishing both the actus reus of the crime and the mens rea. It must first satisfy the evidential burden to show that its allegations have something to support them. If it cannot satisfy this burden, the defence may submit or the judge may direct that there is no case to answer, and the judge must direct the jury to acquit. The prosecution may sometimes rely on presumptions of fact to satisfy the evidential burden of proof (e.g. the fact that a woman was subjected to violence during sexual intercourse will normally raise a presumption to support a charge of rape and prove that she did not consent). If, however, the prosecution has established a basis for its case, it must then continue to satisfy the persuasive burden by proving its case beyond reasonable doubt (see proof beyond reasonable doubt). It is the duty of the judge to tell the jury clearly that the prosecution must prove its case and that it must prove it beyond reasonable doubt; if he does not give this clear direction, the Defendant is entitled to be acquitted.

There are some exceptions to the normal rule that the burden of proof is upon the prosecution. The main exceptions are as follows. (1) When the Defendant admits the elements of the crime (the actus reus and mens rea) but pleads a special defence, the evidential burden is upon him to prove his defence. This may occur, the example, in a prosecution for murder in which the Defendant raises a defence of self-defence. (2) When the Defendant pleads automatism, the evidential burden is upon him. (3) When the Defendant pleads insanity, both the evidential and persuasive burden rest upon him. In this case, however, it is sufficient if he proves his case on a balance of probabilities (i.e. he must persuade the jury that it is more likely that he is telling the truth than not). (4) In some cases statute expressly places a persuasive burden on the Defendant; for example, a person who carries an offensive weapon in public is guilty of an offence unless he proves that he had lawful authority or a reasonable excuse for carrying it"

13. We have perused and considered the entire evidence of this case and the findings given by the learned trial court. In our opinion, it is the fundamental principal of criminal jurisprudence that an accused is presumed to be innocent unless the prosecution proves its case beyond reasonable doubt. We have also considered the evidence for the purpose of ascertaining the motive. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person, but in this case, there is no evidence to establish the motive which is one of the important ingredient for commission of offence under Section 302 IPC. Meaning thereby, the burden lies upon the prosecution to prove the guilt of accused, but here in this case, there is no direct evidence because the prosecution has relied upon the

circumstantial evidence of recovery of ornament and cloths from the respondent, but after considering the statements of all the witnesses held that prosecution has miserably failed to prove its case beyond reasonable doubt.

14. In our opinion, no case is made out to grant leave to appeal or to admit the appeal filed by the complainant because the learned trial court has rightly arrived at with the finding that the circumstantial evidence lead by the prosecution has not established its case beyond reasonable doubt.

15. In view of the above, the instant leave to appeal and appeal filed by the complainant are hereby dismissed.