
(2017) 07 RAJ CK 0058
In the Rajasthan High Court
Case No : 162 of 2017

State of Rajasthan

APPELLANT

Vs

Amrik Singh S/o Aroop Singh @ Jagroop Singh

RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 378\(iii\)](#), [Section 378\(i\)](#) - Power to examine the accused - Appeal in case of acquittal - Appeal in case of acquittal

Citation : (2017) 07 RAJ CK 0058

Hon'ble Judges : Gopal Krishan Vyas, Manoj Kumar Garg

Bench : DIVISION BENCH

Advocate : J.P.S. Choudhary, ?Umesh Shrimali?Rakesh Matoria

Final Decision : Dismissed

Judgement

1. The instant criminal leave to appeal has been filed by the State of Rajasthan under Section 378 (iii) & (i) of Cr.P.C . against the judgment dated 23rd of July, 2016 passed by learned Special Judge (Women Atrocities & Dowry Cases), Sri Ganganagar (Trial Court) in Session Case No.61/2014 (419/2014), whereby the learned trial court acquitted the respondent- Amrik Singh from the charges levelled against him under Section 499 and 302 of IPC.
2. The complainant- Ashok Kumar has also filed separate appeal being D.B. Cri. Appeal No.5/2017 challenging the judgment impugned.
3. Succinctly stated, the facts of the case are that on 1. 0.04.2014 at about

02.30 PM, complainant- Ashok Kumar filed a written report before the S.H.O., Police Station Kotwali, Sri Ganganagar at Govt. Hospital, Sri Ganganagar to the effect that he along with his wife resides at Lalchand-Ki-Dhani and they were not having any child. As per contents of the report, his friend Amrik Singh (respondent herein) frequently visiting to his house and some time he was residing with them and he was doing labour work and also doing the work of driver on tractor.

4. In the report it was further stated that a day before the occurrence, Amrik Singh stayed in his house and on the next day morning at 7''O Clock he (Amrik Singh) upon his work place and complainant also left the house. As per complainant's contention, he worked along with Mistry Baljit Singh and came back in the evening at 07.30 PM. The complainant reached to his house and found his room locked and upon enquiry from the children of neighbour, they informed that they are not aware about his wife. In the evening at 9''O Clock, Amrik Singh (respondent) came to the house and put a question where is your wife, then complainant replied that probably she went out from the house, then Amrik Singh asked complainant to break open the lock. The complainant and Amrik Singh both broke open the lock and saw that Kaushalya, wife of complainant, was lying dead and one turban was found upon her neck and she was unconscious. The deceased, Kaushalya was immediately taken to hospital by the complainant and Amrik Singh, where she was declared dead by the doctors.

5. On this report, FIR No.179/2014 was registered against unknown person but after investigation on the basis of circumstantial evidence of recovery and extra judicial confession, the SHO, Police Station Kotwali, filed a charge sheet against respondent Armik Singh for offences under Sections 450 and 302

of IPC.

6. The learned trial court after providing of hearing to respondent, framed charge against him for offence u/s 499 & 302 IPC, which he denied and claimed for trial.

7. During trial, to prove the case the prosecution examined 13 witnesses and exhibited 44 documents. Thereafter the trial court recorded the statements of respondent under Section 313 Cr.P.C., in which he denied the allegations levelled by the prosecution witnesses, and no evidence was produced by him in defence.

8. The learned trial court after recording the evidence finally heard arguments and acquitted the accused respondent from the charges levelled against him vide judgment impugned dated 23.07.2016 passed in Session Case No.61/2014 (419/2014), against which leave has been sought by the State.

9. Learned Public Prosecutor and learned counsel for the complainant vehemently argued that the trial court has committed serious error in disbelieving the recovery and extra judicial confession, therefore, it is a case in which the trial court ought to have convicted the respondent on the basis of circumstantial evidence produced by the prosecution in support of its case. Learned Public Prosecutor further submitted that merely on the basis of conjectures and surmises the learned trial court gave erroneous finding of acquittal, therefore, the impugned judgment deserves to be quashed.

10. Learned Public Prosecutor and learned counsel for the complainant further argued that on the basis of statement of Dr. B.M. Sharma and Dr. Prem Arora, it cannot be said that death was caused due to strangulation but this finding is totally erroneous because the trial court has not considered entire evidence in right prospects and in accordance with law. Therefore, the judgment

impugned deserves to be quashed and set aside and leave may be granted.

11. Per contra, learned counsel appearing on behalf of respondent submits that prosecution has failed proved its case beyond reasonable doubt and to convict the person on the basis of circumstantial evidence, whereas it is the duty of the prosecution to prove its case beyond all shadows of reasonable doubt. He thus argued that it is not a fit case to disturb the finding of trial court so as to grant leave against the judgment impugned.

12. We have perused the finding of learned trial court with respect to extra judicial confession. The learned trial court considered the statements of PW.4-Ashok Kumar, PW.3- Vinod Kumar, PW.2- Kalu @ Kalia and PW.1- Chamkaur Singh and gave finding that prosecution has failed to prove the extra judicial confession of the accused respondent.

13. We have also perused the statements of all these witnesses. PW.4- Ashok Kumar (complainant) stated in his statement that, "incident was not seen by him, but I was informed by Chamkaur Singh that Amrik Singh has murdered my wife, therefore, he is liable to be punished."

14. PW.2- Kalu @ Kaliya stated that Amrik Singh made extra judicial confession before Chamkaur Singh, I was standing near Chamkaur Singh and in the cross examination, he said that, "VERNACULAR MATTER OMITTED"

Similarly, PW.-1 Chamkaur Singh, who is sole witness of extra judicial confession, has turned hostile and did not support the prosecution case.

15. In our opinion when the sole witness of extra judicial confession PW.1- Chamkaur Singh turned hostile, then there is no error in the finding given by the trial court so as to disbelieve the

fact of extra judicial confession.

16. We have also perused the statement of complainant- Ashok Kumar, in which he has categorically said that, "Amrik Singh is my friend and residing with me, on the date of incident was very much with him and came back in the evening at 9"O Clock from his work place, at that time, there was lock upon the room and Amrik Singh made enquiry about my wife."

17. The learned trial court after considering the fact that respondent was very much present in the house on the date of incident and residing with the complainant and his wife, there was no quarrel in between them and the FIR was filed by complainant, Ashok Kumar against unknown person without any allegation against Amrik Singh, but improved his statement to involve the respondent with the alleged crime.

18. Upon assessment of entire evidence, we are of the opinion that it is not a fit case to grave to appeal against the judgment because the case is based upon circumstantial evidence and prosecution has failed to prove the fact of extra judicial confession and recovery of articles and motive/conduct of the respondent. Upon our assessment, it is obvious that in the case based upon circumstantial evidence, it is the duty of the prosecution to prove its case beyond reasonable doubt, that too there should be complete chain of circumstantial evidence, but here in this case, the prosecution has completely failed to prove its case beyond reasonable doubt on the basis of extra judicial confession, recovery and motive, therefore, no case is made out for granting leave to appeal against the judgment impugned, hence, the criminal leave to appeal is hereby dismissed.

19. In view of dismissal of criminal leave to appeal, the criminal appeal filed by the complainant- Ashok Kumar, is also hereby

dismissed.