
(2014) 02 RAJ CK 0008

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 161/2013

State of Rajasthan

APPELLANT

Vs

Birbal and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 302, 380, 457

Citation : (2014) 2 Crimes 85

Hon'ble Judges : Govind Mathur, J; Atul Kumar Jain, J

Bench : Division Bench

Advocate : K.R. Bishnoi, Public Prosecutor, Advocate for the Appellant

Judgement

1. To have leave to appeal the judgment dated 18.6.2013 passed by learned Addl. Sessions Judge, Deedwana this application is preferred.

2. By the judgment aforesaid, the learned trial court acquitted accused Birbal, Jagdish and Manoj @ Munna from the charges pertaining to offence punishable under Sections 457, 380 read with 120-B and Section 302 read with 120-B I.P.C. Accused Aslam was also acquitted from the charge relating to offence punishable u/s 380 read with 120-B I.P.C. and Section 302 read with 120-B I.P.C.

3. While pressing this application, the argument advanced by learned Public Prosecutor is that the trial court erred while acquitting the accused persons by disbelieving the recoveries made at their instance. It is submitted that adequate evidence is available on record for having criminal conspiracy among the accused persons to accomplish the crime. To substantiate this argument learned Public Prosecutor has placed reliance upon certain call-details pertaining to cellular phone No. 9549343272, 8649974911 and 9983038827. These cellular phone numbers relate to the accused Manoj, Aslam and Birbal. Reliance is also placed upon the cellular phone having No. 8649974911 having connection in the name of accused Aslam.

4. We have considered the arguments advanced and also perused the judgment

impugned.

5. So far as the recovery of weapon of offence and a rope is concerned, suffice to mention that the trial court disbelieved them being made from an open place after a period of three months from the date of incident and further that no independent witness supported that.

6. From the appreciation made by the trial court commencing from para 91 onwards in the judgment impugned, we do not find any wrong with the conclusion arrived at. The weapon of offence was recovered after a lapse of three months from an open place and recovery of that was not made in presence of independent person Mangla Ram. The prosecution did not choose to produce him in evidence. Besides that, there is a discrepancy in the versions given by the Investigating Officer and the other police personnel who was attesting witnesses of recovery. Similarly, the recovery of rope too is of no consequence as that was also made from an open place after a period of three months from the date of incident. This recovery too has not been established by any independent witness.

7. The evidence relating to call-details are also of no consequence in view of the fact that having mere conversation on phone by certain persons is not sufficient independently for arriving at a conclusion for forming a criminal conspiracy, as such, we do not find any wrong with the findings arrived at by the trial court, hence, no interference is warranted. The application seeking leave to appeal, thus, is dismissed. The record of trial court be sent forthwith.