
(2016) 08 RAJ CK 0043

In the Rajasthan High Court

Case No : Criminal Leave to Appeal (CRLA) No. 319 of 2015

State of Rajasthan

APPELLANT

Vs

Dhanna Son of Sh. Nanda

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(iii)
Penal Code, 1860 (IPC) — Section 147, 302, 34

Citation : (2017) 171 AIC 842 : (2016) 4 CriCC 794 : (2016) 2 WLCRajUC 454

Hon'ble Judges : Mr. Gopal Krishan Vyas and Mr. G.R. Moolchandani, JJ.

Bench : Division Bench

Advocate : Mr. C.S. Ojha, P.P, for the Appellant; Mr. Deepak Menaria, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The instant cr. leave to appeal has been filed by the State of Rajasthan under Section 378(iii) and (i) of the Cr.P.C. against the judgment dated 30.6.2015 passed by the learned Addl. Sessions Judge No. 3, Bhilwara in Sessions Case No. 29/2012 whereby the respondents were acquitted from the offence punishable under Sections 147, 302 and 302/149 IPC.

2. As per the facts of the case, the complainant Habuda submitted a written complaint before the SHO Police Station Kothadi, District Bhilwara on 4.8.2008 at 4.35 pm in which it was alleged that on 31.7.2008 at about 8.00 am respondents came at village Dhand Ka Kheda with common intention on tractor and motorcycle and started abusing complainant's wife Bali and gave beatings to her. The complainant and one Modu reached on spot for rescue till then wife of the complainant was assaulted and fell down and all the respondents went away from the place of occurrence. As per the complainant Smt. Bali Devi injured was taken to the Shahpura Hospital, but doctors refused to give treatment to her, therefore, they went to the Government Hospital, Bhilwara but doctors refused to give treatment in spite of the fact that grievous injuries were caused to Smt.

Bali. As per complainant due to bad health condition, she was again taken to the Kothadi Hospital, but the doctor of the Hospital of Kothadi asked to take her at Udaipur for treatment.

3. As per complainant, the condition of his wife became serious, therefore, he lodged FIR on 4.8.2008 for the incident which is said to be occurred on 31.7.2008.

4. The SHO Police Station Kothadi registered FIR No. 104/2008 (Ex.P/6) under Section 143, 341 and 323 IPC and commenced investigation. During investigation, Smt. Bali died, therefore, offence under Section 302/34 IPC was added.

5. The investigating officer after completing investigation, filed charge-sheet against the respondents in the court of Civil Judge (JD) cum Judicial Magistrate, First Class, Kothadi under Section 143 and 302/34 IPC from where case was committed to the court of District & Sessions Judge, Bhilwara, but later on, transferred to the court of Addl. District & Sessions Judge (FT) No. 1, Bhilwara and further upon absolution of Fast Track Courts, the matter was transferred to the court of Addl. District & Sessions Judge No. 3, Bhilwara where trial took place.

6. The learned trial court framed charge under Section 147, 302 and 302/149 IPC and after recording statements of 23 prosecution witnesses and exhibiting 24 document recorded statement of respondents under Section 313 Cr.P.C. in which they denied all the allegations levelled by the prosecution witnesses and said that Smt. Bali died due to the disease Asthma and paralysis and thus false case has been registered against them.

7. After recording statement under Section 313 Cr.P.C. final arguments were heard and the learned trial court acquitted the respondents from the charges levelled against them vide judgment dated 30.6.2015.

8. After hearing learned Public Prosecutor we have perused the entire evidence and finding given by the learned trial court. Admittedly, the cause of death of the deceased is due to respiratory paralysis due to aedema and compression of spinal cord at the level of C1 to T2 and further the learned trial court observed in the finding that all the allegations levelled by the complainant is not proved because as per the allegation of the complainant incident took place on 31.7.2008 but no information was given to the police and for the first time the FIR was filed on 4.8.2008 at Police Station Kothadi. It is also observed in the finding that Smt. Bali was taken in the Satellite Hospital, Shahpura on 2.8.2008 where treatment took place and at the time of treatment, it was informed by the complainant party that injury was caused by the buffalo. Further in the admit card of the hospital where by the deceased was admitted, the complainant himself informed to the hospital authorities that injuries were caused to Smt. Bali due to his by buffalo and it was also informed by the complainant to the hospital authorities on 5.8.2008 that no information has been given to the police because injuries were caused by buffalo.

9. The doctors supported aforesaid fact in their statements, so also, PW - 1 Mohan Lal, PW - 6, Narayan, PW - 7 Modhu and PW - 8 Dr. Kali Charan specifically stated before the court that they reached on spot after the incident and as per the finding given by the learned trial court in the statement of PW - 1 Mohan Lal, PW - 7 Modu and PW - 16 Bakshu, there are major contradiction, therefore, it is a case in which the prosecution has failed to prove its case beyond reasonable doubt. Learned trial court further observed that if there was allegation of beating by Lathi then obviously injuries were to be found upon the body of the deceased, but no injury was found upon the body of the deceased. The learned trial court acquitted the respondents from the charges levelled against them under Section 147, 302 and 302/34 IPC on the ground that prosecution has failed to prove its case beyond reasonable doubt.

10. Upon assessment of entire evidence and finding given by the learned trial court, we are of the opinion that no error has been committed by the learned trial court to acquit the respondents, therefore, it is not a fit case to grant leave to appeal.

11. Hence, this cr. leave to appeal is hereby rejected.