

(2016) 01 RAJ CK 0099
In the Rajasthan High Court
Case No : Criminal Appeal No. 93 of 1996.

State of Rajasthan

APPELLANT

Vs

Smt. Rekho alias Rekha and another

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 498A

Citation : (2016) 2 CriLR 615

Hon'ble Judges : Gopal Krishan Vyas;P.K. Lohra, JJ.

Bench : Division Bench

Advocate : J.P.S. Choudhary, Public Prosecutor, for the Appellant; Deepak Bora, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Lohra, J. - The instant criminal appeal was initially filed by the appellant State against the impugned judgment dated 02.08.1995 rendered by the Additional Sessions Judge, Barmer (for short "the Trial Court") as Criminal Leave to Appeal No. 159/1995, but subsequently on grant of leave, vide order dated 31.01.1996 registered as Regular D.B.Criminal Appeal. By the impugned judgment, learned Trial Court acquitted the accused-respondents for the offences under Sections 302, 498A and 201 of Indian Penal Code.

2. At the threshold when the appeal was preferred and leave was granted, notices were issued against three respondents namely, Smt. Rekho alias Rekha, Binja Ram and Natha. Notices were not served on the accused respondent Binja Ram for more than a decade and thereafter a communication is received from the Additional Sessions Judge, Barmer furnishing information about death of accused-respondent Binja Ram. His death certificate was also enclosed. After verifying the facts, the Court while acknowledging the death of accused respondent Binja Ram son of Harchand abated the instant appeal vis-a-vis deceased accused Binja Ram.

3. The prosecution story unfurled from the written report (Ex.P/1) by the complainant Manakaram (PW-1) lodged with Police Station, Sadar, Barmer reveals that on 26.09.1994 Babu son of Gamera (PW-9) visited his house at village Dhundha at about 9:00 a.m. divulging information about Manakram's sister Smt. Pampo that she was unwell and passed away previous night. It is further stated in the report that PW-9 Babu while reporting this untoward incident advised complainant to immediately visit village Jasai and thereupon he at once proceeded for village Jasai. Narration in the FIR also states that when the complainant reached village Jasai he came to know that last rites of his sister have already been performed by her in-laws family hurriedly. On coming to know about this fact that last rites of his sister have been clandestinely performed, as per version of the complainant, he made endeavour to enquire about cause of her sudden death and then it was revealed to him that Smt. Pampo was not indisposed but was murdered by the accused respondents. With this assertion, the complainant prayed for necessary prompt action in this regard.

4. On receipt of written report, SHO of Police Station, Sadar Barmer commenced investigation and submitted charge-sheet against all the three accused respondents for offences under Sections 302, 498A and 201 read with Section 34 IPC. Charge-sheet was initially filed before the Additional Munsif and Judicial Magistrate No. 1 Barmer and subsequently it was committed to the learned Trial Court.

5. During the course of trial, learned Trial Court recorded statements of 17 prosecution witnesses including the statement of doctor. Besides this, 18 documents were exhibited which includes autopsy report of deceased Smt. Pampo. As a matter of fact, deceased was Meghwal by caste and as per custom prevailing in the community, her dead body was buried which was recovered during investigation and its post mortem was conducted.

6. The learned Trial Court, on appreciation of evidence, formulated two points for determination and finally while recording finding on both the points in favour of accused respondents acquitted them by extending benefit of doubt.

7. Mr. J.P.S. Choudhary, learned Public Prosecutor has strenuously urged that appreciation of evidence by the learned Trial Court is per se erroneous and, therefore, finding of acquittal cannot be sustained. Learned Public Prosecutor would contend that accusation against the respondents has been proved by the prosecution beyond all reasonable doubts but the learned Trial Court without any justifiable reason has extended benefit of doubt to the accused-respondents, rendering the impugned judgment vulnerable. Lastly, learned Public Prosecutor has urged that learned Trial Court has miserably failed to appreciate strained matrimonial relations between deceased Smt. Pampo and accused-respondent Natha, a plausible cause for commission of offence. He, therefore, submits that serious acrimony between the spouses i.e. deceased and the respondent Natha has not been properly considered by the learned Trial Court is sufficient to set aside the impugned judgment.

8. Per contra, learned counsel for the accused-respondents submits that there is no ground much less plausible ground available to the prosecution to impeach the findings recorded by the learned Trial Court. Learned counsel for the accused-respondents further submits that learned Trial Court has examined the evidence and materials available on record in right perspective resulting in acquittal of the accused-respondents which requires no interference.

9. We have heard learned Public Prosecutor and learned counsel for the accused-respondents and perused the impugned judgment and the entire record of the case.

10. The prosecution in the instant case during trial examined 17 witnesses to bring home guilt against the accused respondents for offences under Section 302 read with Section 34, Section 201 and Section 498A of the Indian Penal Code (IPC). The material witness i.e. first informant PW-1 Manaka is the brother of the deceased. There remains no quarrel that he is not an ocular witness. PW-1 in order to show serious acrimony between accused Natha and deceased Pempo has deposed in his examination-in-chief that accused Natha was committing atrocities on her for bringing insufficient dowry and not giving a birth to a male child. The endeavour of the witness (PW-1) appears to be for establishing motive of the accused respondent for commission of offence. During his cross-examination, PW-1 Manaka has very candidly admitted that he has not lodged any complaint against accused persons for committing atrocities on his deceased sister. He has also deposed during his cross-examination that on receiving information through PW-15 Baburam about mishap of death of his sister Pempo, he immediately proceeded for Jasai on motorcycle accompanied by PW-9 Khetaram. As per the version of PW-1 Manaka, while in way to Jasai, he was harbouring suspicion about Pempo's homicidal death by the accused respondent but no endeavour was made to lodge complaint in any of the police stations though there were two police stations on the way. There is yet another redeeming feature of testimony of PW-1 Manaka which can be construed as a mitigating factor to dislodge presumption of motive for commission of offence by the accused respondents. The relevant excerpt of statement of Manaka in this behalf reads as under:-

"g ckr lgh gS fd isEiksa dh "kknh dks vkSj isEiks ejh ml njfe;ku isEiks gekjs ;gka Hkh vkrh tkrh o tlkbZ esa Hkh jgrh FkhA"

11. PW-3 Kumpa Ram in his examination-in-chief has projected a very dismal picture about the matrimonial relationship between deceased and accused Natha and stated that deceased Pempo was ill-treated by her husband and other family members of inlaws. During his cross-examination, PW-3 Kumpa Ram has virtually retracted from his version of examination-in-chief which is clearly discernible from his following deposition:-

"isEiksa dks fdlh us ekjus ;k dwVus dh ckr tlkbZ esa gesa fdlh us ugha crkbZA"

12. PW-3 is a close relative of deceased and the complainant as he is their uncle.

The witness has also reiterated the version of PW- 1 Manaka that no police report was lodged against accused persons for the atrocities committed on the deceased. Statements of PW-3 during his cross-examination are also significant for substantially diluting the motive for commission of offence. The relevant part of deposition reads as under:-

"isEiks tc rd llqjky jgh rc rd mls jksVh] diM+k mldh llqjky okys chatk ukFk] js[kka oxSjk gh nsrs FksA"

13. The cause of death according to this witness is based on medical report and he has also candidly admitted that he has not seen the incident. The relevant part of evidence of witness (PW-3) reads as under:-

"ge rks MkWDVjksa ds dgus ds vuqlkj gh dg jgs gSa] geus rks ekjrs ugha ns[kkA"

14. Similarly, the evidence of other prosecution witness PW-4 Magaram is also quite evasive and not inspiring confidence. PW-5 Dungara, PW-6 Nakhta and PW-7 Labhu have not supported the prosecution story and turned hostile. PW-9 Khetaram is a real uncle of the deceased and if his testimony is examined critically with birds eye-view, then it would ipso facto reveal that he too is not a material witness to prove motive of the accused respondent for commission of offence. PW-10 Nemaram is Motbir in whose presence dead body was taken out after digging grave and inquest report (Ex.P/9) was prepared. PW-11 Sagara has turned hostile and testimony of PW-12 Sadularam is not of significance. PW-13 Gaji has also not supported the prosecution story by turning hostile. PW-14 SHO, Police Station, Sadar has simply deposed that complainant Manakaram (PW-1) submitted a written report before him and thereupon FIR (Ex.P/12) was lodged and investigation was forwarded to C.O. Thereafter charge-sheet was filed and also exhibited relevant documents in the form of incriminating materials against the accused respondents. In his statement, he has narrated about the condition of dead body and also admitted that there was no external injury on the deceased.

15. Now comes the medical evidence i.e. evidence of PW-17 Dr. M.M. Purohit who was Medical Jurist in Government Hospital, Barmer. The doctor during his examination-in-chief has corroborated autopsy report Ex.P/18 for showing the cause of death. The doctor has also proved signature of Dr. D.K. Ramawat on the post mortem report about the injuries of deceased. PW-17 has deposed during his examination-in-chief as under:-

""kjhj ij vksj dksbZ ?kko ;k [kjksap ugha FkhA xnZu dks [kksyus ij gk;MZ cksu dk ckbZ rjQ QzsDpj Fkk (VwVh gqbZ Fkh) gk;MZ cksu dh xzsVj dksju ck, rjQ VwVk gqvk FkkA ck, rjQ gM~Mh ds ikl lc and dUtsDVscy fV";w esa lc and dqVsfu;"k fV";w esa [kwu tek gqvk FkkA vkSj ysfjaXI o Vsfda;k esa Hkh jDrL=ko FkkA ysfjaXI o Vs~fd;k esa isfVdsy jDr L=ko FkkA QsQM+s dh f>Yyh (Iywjk) esa Hkh gjs jax dh >kabZ FkhA (fxzuhlfMLdyjs"ku) nksuksa QsQM+ksa esa xSl ? kqyh FkhA nksuksa QsQM+s xgjs jax ds FksA g`n; dh f>Yyh (isfjdkfMZ;e) esa Hkh gjs jax dh >kabZ FkhA nksuksa g`n; ds ck,a o nk,a Hkkx esa dksbZ [kwu

ugha FkkA vkSj Qysch isV dh f>Yyh isfjVksfu;e esa Hkh gjs jax dh >kabZ FkhA eqag QsfjaXI o [kkus dh uyh (blks Qsxl) esa Hkh gjs jax dh >kabZ FkhA"

16. The doctor has also deposed that sand surrounding the dead body was sent for chemical examination but no FSL report was produced during trial. The doctor in his deposition has pointed out the cause of death by strangulation i.e. mod asphyxia.

17. Well it is true that the medical evidence has not been sufficiently impeached inasmuch as during cross-examination, the doctor has not distracted from his version of unnatural death of deceased but then the other prosecution evidence is not convincing and credible to bring home guilt against the accused respondents. The learned Trial Court has made sincere endeavour to analyse the prosecution evidence for connecting the accused respondents with the offence, however, eventually, it has found that the lack of motive for commission of offence and oblique evidence is insufficient to prove accusation beyond all reasonable doubts. Assuming it that it was a case of circumstantial evidence, then too, the circumstances are susceptible of two equally possible inferences either supporting the prosecution or favouring the accused persons. The cardinal principle of Criminal Jurisprudence on "Circumstantial Evidence" is no more res integra that where circumstances are susceptible of two equally possible inferences, the Court should adopt that inference which favours the accused rather than an inference which goes in favour of prosecution. The learned Trial Court has also recorded a definite finding that solely on the testimony of medical evidence, the finding of guilt cannot be recorded against the accused persons without cogent and convincing prosecution evidence. In support thereof, the learned Trial Court has placed reliance on decision of Supreme Court and this Court for declining to record finding of guilt against the accused respondents and consequently extended benefit of doubt. Having delved deep in the matter and on analysing the evidence and materials available on record threadbare, we fully concur with the findings of the learned Trial Court and are not persuaded to interfere with the discretion exercised by the learned Trial Court judiciously. Learned Trial Court's approach in appreciation of evidence is pragmatic and conforms the basic tenets of Criminal Justice Delivery System. The learned Trial Court has rightly applied the basic principle of criminal jurisprudence i.e. the prosecution is obliged to prove accusation beyond reasonable doubts and, therefore, we feel dissuaded to interfere with the impugned judgment in this appeal.

18. The upshot of above discussion is that we find no merit in this appeal and the same is, therefore, dismissed.