
(2017) 09 RAJ CK 0037
In the Rajasthan High Court
Case No : 317 of 2017

State of Rajasthan

APPELLANT

Vs

Swaroop Ram @ Patta S/o Kanaji

RESPONDENT

Date of Decision : 22-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 216](#), [Section 378\(iii\)](#), [Section 378\(i\)](#) - Court may alter charge - Appeal in case of acquittal - Appeal in case of acquittal

Citation : (2017) 09 RAJ CK 0037

Hon'ble Judges : Gopal Krishan Vyas, Pushpendra Singh Bhati

Bench : DIVISION BENCH

Advocate : S.K. Vyas

Final Decision : Dismissed

Judgement

1. The instant criminal leave to appeal has been filed by the State of Rajasthan under Section 378 (iii) and (i) of Cr.P.C . seeking leave to file appeal against the judgment dated 25 th of October, 2016 passed by learned Sessions Judge, Jalore, in Session Case No.3/2012, whereby the learned trial court acquitted the respondent from the charge leveled against him for offence under Section 302 of IPC.
2. Succinctly stated, the facts of the case are that on 21.05.2008 complainant- Raju Singh (PW.4) at 10.00 AM submitted a written report (Ex.P/7) at Police Station- Jalore for the incident occurred in the Open Air Camp, Keshvana, Jalore. It

was stated in the written complaint that while he was on his duty, at about 05.00 AM he was informed by Rajendra that one prisoner Lakharam was crying while sitting on his cot and blood was oozing out from his head. Thereafter, prisoner was immediately taken to hospital in vehicle jeep along with driver Ishwar Singh and manager Manaram, where during treatment Lakha Ram died.

3. In the complaint is further stated that other prisoner Swaroopa Ram @ Patta who was residing with him in Open Air Camp was also found missing. Upon the aforesaid complaint, F.I.R. No.142/2008 was registered at Police Station- Jalore for offence under Sections 303 and 224 of IPC and respondent- Swaroopa @ Patta was arrested vide Ex.P/9.

4. After investigation charge sheet against the respondent was filed under Sections 303 and 224 IPC in the court of Addl. Chief Judicial Magistrate, Jalore, from where the case was committed to Sessions Court for trial. The learned Sessions Judge after providing opportunity of hearing to the parties framed charge under Sections 302 and 224 IPC against the respondent and trial was commenced. However, during trial, an application was moved under Section 216 Cr.P.C., for amending the charge, the learned trial court amended the charge on 07.10.2015 for offence under Sections 302 and 224 of IPC.

5. The learned trial court after recording circumstantial evidence, finally acquitted the respondent from the charge levelled against him for offence under Section 302 of IPC vide judgment dated 25.10.2016. Against the said judgment, leave has been sought by the State Government.

6. Learned Public Prosecutor argued that inspite of availability of circumstantial evidence on record, the learned trial court acquitted the respondent from the charge levelled against him,

therefore, the finding of acquittal recorded by the learned trial court deserves to be quashed. Learned Public Prosecutor further submitted that undisputedly the respondent and deceased were residing in one room at Open Air Camp, Jalore and in the morning Lakha Ram, the deceased, was found injured and the respondent was missing from the room, therefore, a presumption was to be drawn by the trial court so as to connect the respondent with the crime. However, unfortunately trial court committed a grave error to acquit the respondent from the charge levelled against him, therefore, the instant criminal leave to appeal may kindly be allowed.

7. After considering the entire facts of the case and evidence on record, it is revealed that there is no evidence of last seen, or evidence as to from which date the respondent was missing and no other evidence viz. blood stained clothes, weapon or any evidence of any quarrel came on record and charge sheet was filed only on the basis of presumption that on the date of incident, the respondent was missing, therefore, the learned trial court acquitted the respondent from the charge levelled against him while giving finding that there is no evidence of last seen, recovery of any article or weapon. Therefore, we are of the opinion that it is not a fit case to grant leave to appeal against the judgment impugned, hence, the present leave to appeal is hereby dismissed.