
(2001) 11 RAJ CK 0035
In the Rajasthan High Court
Case No : Criminal Appeal No. 364 of 1988

State of Rajasthan

APPELLANT

Vs

Vinod

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 457

Citation : (2002) CriLJ 1308

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : O.P. Singharia, P.P, for the Appellant; S. Sarupria, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This appeal has been filed by the State of Rajasthan against the judgment and order dated 25-4-1988 passed by the learned Judicial Magistrate, 1st Class, Churu by which the learned Judicial Magistrate acquitted the accused-respondent for offence u/s 457, I.P.C.

2. This appeal arises in the following circumstances :

i) On 14-1-1985 at 1.15 a.m. P.W. 3 Charandas lodged an oral report with the police station, Churu stating that in the night of 13-14-1-1985, he was sleeping in his house situated in Ward No. 8 Churu and his son Dharam Pal, P.W. 2 and his wife P.W. 4 Shakuntala were also sleeping in their Kotha. At about 12.30, the accused-respondent after jumping the wall entered the room in which P.W. 2 Dharampal was sleeping along with his wife P.W. 4 Shakuntala and seeing him P.W. 2 Dharampal and P.W. 4 Shakuntala made hue and cry and hearing their cries, he came to that room and P.W. 5 Unkar Mal and P.W. 1 Kewal Ram also came there and accused-respondent was caught hold by them and thereafter he was also produced in the Police Station.

3. On this report, police chalked out regular FIR Ex. P/1 and started investigation

and during investigation, the accusedrespondent was got medically examined by D.W. 1 Dr. B.L. Soni and his injury report is Ex. D/5 which shows that he received 13 injuries on his person.

4. Through Fard Ex. P/3, the accusedrespondent was arrested on 17-1-1985.

5. That after usual investigation, police submitted challan against the accused-respondent for offence u/s 457, I.P.C.

6. On 17-2-1986, the learned Magistrate framed charges for offence u/s 457, I.P.C. against the accused-respondent who pleaded not guilty and claimed trial.

7. During trial, as many as 6 witnesses have been produced on behalf of the prosecution and statement of accused-respondent was recorded u/s 313, Cr. P.C. and 3 witnesses were examined in defence.

8. After conclusion of the trial, the learned trial Magistrate acquitted the accused-respondent through his judgment and order dated 24-5-1988 inter alia holding :

i) Though there is evidence that the accused-respondent was found in the house of P.W. 3 Charandas, but for what purpose he entered the house, it has not been proved by the prosecution, though the charge which was framed against the accused-respondent was framed that he entered the house for the purpose of committing theft.

ii) That the accused-respondent received 13 injuries, but the prosecution has not explained as to how he received injuries.

iii) That since the accused-respondent was neighbour of P.W. 3 Charan Das and his house was in front of the house of P.W. 3 Charandas, therefore, the prosecution has not been able to prove for what purpose he was found in the house of P.W. 3 Charandas.

9. Aggrieved from the said judgment and order this appeal has been filed by the State.

10. In this appeal, it has been argued by the learned P.P. that from the statements of P.W. 2 Dharampal, P.W. 3 Charandas and P.W. 4 Shakuntala, the case of prosecution that the accused-respondent entered the house for the purpose of committing theft is proved, therefore, it has been prayed that this appeal should be allowed and the accused-respondent should be convicted for offence u/s 457, I.P.C.

11. On the other hand, the learned counsel for the accused-respondent submits that the judgment and order of the trial Magistrate are based on correct appreciation of evidence and the same do not call any interference by this Court.

12. I have heard both and perused the record.

13. To prove the charge for offence u/s 457, I.P.C. the prosecution has to prove following two facts :

- i) that the accused committed lurking house trespass by night, or house-breaking by night;
- ii) that the same was committed to commit theft or an offence punishable with imprisonment.

14. The learned Judicial Magistrate has found Point No. 1 proved, but so far as point No. 2 is concerned, the learned Judicial Magistrate has come to the conclusion that the point No. 2 has not been proved by the prosecution.

15. In my opinion, the findings of learned Judicial Magistrate are liable to be confirmed one as they are based on correct appreciation of evidence and from the statement of P.W. 2 Dharampal who is son of P.W. 3 Charandas, the fact that the accused-respondent was known to him and his family is established and the fact that the house of the accused-respondent is in front of their house is also established and it is also established that the accused-respondent is a married person and has some children. From the statement of P. W. 2 Dharampal, it is also established that it was not clear to P.W. 2 Dharampal as to for what purpose, accused-respondent entered the house of P.W. 3 Charandas and he has further stated that there was no bleeding from the injuries of the accused-respondent and he received injuries when he tried to run away, but this part of statement of P.W. 2 Dharampal cannot be accepted as 13 injuries would not be received while running away meaning thereby that when accused-respondent received 13 injuries and he was found in the house of P.W. 3 Charandas, it means that he was beaten by P.W. 3 Charandas or some other persons or there must be some other incident which has been suppressed by the prosecution and thus, the findings of the learned Judicial Magistrate that the prosecution has not explained the injuries of accused-respondent are liable to be confirmed one and, therefore, non-explanaton of injuries of accused-respondent in this case appears to be fatal one. Thus, the prosecution has failed to prove that the accusedrespondent entered the house of P.W. 3 Charan Das with an intention to commit theft or any other offence are liable to be confirmed and thus, point No. 3 has not been proved by the prosecution and, therefore, the findings of acquittal recorded by the learned trial Magistrate are liable to be confirmed one and the present State appeal is liable to be dismissed.

16. In my considered opinion, the judgment of the learned Magistrate is based on correct appreciation of evidence and the reasons which have been assigned by the learned Magistrate are reasonable and plausible and cannot be entirely and effectively dislodged or demolished and this Court sitting and hearing appeal against acquittal would not like to disturb the order of acquittal merely on flimsy grounds.

17. Since the learned Magistrate has arrived at the findings just quoted above and since they are based on correct appreciaton of evidence, this Court should also give proper weight and consideration as the views of the trial Magistrate as to the credibility of the witnesses must be respected. Apart from this, the Court

should be very slow in disturbing the findings of facts arrived at by the learned trial Magistrate as the Magistrate had advantage of seeing the witnesses and even if two reasonable conclusions can be drawn on evidence on record, the High Court should as a matter of judicial caution refrain from interfering with the order of acquittal recorded by the Court below.

For the reasons mentioned above, the present State appeal is dismissed after confirming the judgment and order dated 25-4-1988 passed by the learned Judicial Magistrate, Ist class churu.